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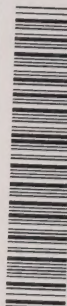
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Certain Allegations
Financial Dealings
Karlheinz Schreiber and
The Right Honourable Brian Mulroney



Gouvernement
Publications

Commission d'enquête concernant les allégations
au sujet des transactions financières et
commerciales entre Karlheinz Schreiber
et le très honorable Brian Mulroney



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COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS
RESPECTING BUSINESS AND FINANCIAL DEALINGS
BETWEEN KARLHEINZ SCHREIBER AND
THE RIGHT HONOURABLE BRIAN MULRONEY

Report

VOLUME 2
FACTUAL INQUIRY

The Honourable Jeffrey J. Oliphant
Commissioner



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May 31, 2010

To Her Excellency
The Governor General in Council

May it please your Excellency:

Pursuant to an Order in Council dated June 12, 2008, I have inquired into certain allegations respecting business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C. With this letter, I respectfully submit my Report.

A handwritten signature in dark ink, appearing to read 'Jeffrey J. Oliphant'.

Jeffrey J. Oliphant
Commissioner

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Oliphant Commission

The Report consists of three volumes: 1 *Executive Summary*; 2 *Factual Inquiry*; and 3 *Policy and Consolidated Findings and Recommendations*. The table of contents in each volume is complete for that volume and abbreviated for the other two volumes. The Consolidated Findings and Recommendations are also included in Volume 1. In addition, three independent research studies prepared for the Commission have been published separately in a volume entitled *Public Policy Issues and the Oliphant Commission*.

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RESPECTING BUSINESS AND FINANCIAL DEALINGS
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THE RIGHT HONOURABLE BRIAN MULRONEY

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VOLUME 2
FACTUAL INQUIRY

The Honourable Jeffrey J. Oliphant
Commissioner

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Contents

VOLUME 1 – EXECUTIVE SUMMARY

VOLUME 2 – FACTUAL INQUIRY

Abbreviations and Acronyms..... xix

1 – The Integrity of Government..... 1

2 – The Inquiry Process 6

 The Scope and Approach of the Commission 6

 The Nature of Inquiries..... 7

 Fundamental Principles 7

 An Inquiry Is Not a Trial 8

Getting Started 9

 Appointment of Commission Counsel..... 9

 Role of Commission Counsel 9

 Rules of Procedure and Practice 10

 Appointment of a Research Director..... 11

 Administrative Matters 11

 The Role of the Privy Council Office..... 11

 Administrative Staff..... 12

 Offices / Hearing Room 13

 Document Management..... 14

 Confidentiality Undertakings 14

 Document Management Software 14

 Document Manager and Archives..... 15

 Documents at Hearings..... 15

 Communications and Media Approach 16

 Notices of Hearings 16

 Commission Website 16

 General Approach..... 16

 Posting of Documents and Transcripts..... 17

Standing and Funding..... 17

 Motions for Standing and Funding in Part I – Factual Inquiry 17

 Motions for Standing and Funding in Part II – Policy Review 18

Investigation 18

 Document Production 18

Government of Canada Documents	18
Cabinet Confidences	20
Documents from Other Persons	21
Commission Investigator	21
Forensic Accountants	21
Witness Interviews.....	22
Notices of Alleged Misconduct (Section 13 Notices).....	23
Institutional Reports	25
Extension of the Commission's Deadline.....	25
Hearings on Standards of Conduct	26
Factual Inquiry Hearings (Part I).....	27
Compelling the Attendance of Witnesses	27
Oral Evidence	27
Adoption into Evidence of Witness Interviews.....	28
Hearing of Application by Karlheinz Schreiber	28
Closing Submissions	29
Policy Review (Part II)	29
Public Consultations.....	29
Expert Policy Forum.....	29
Concluding Observations.....	31
Notes	32
3 – The Commission's Mandate.....	33
Background to the Inquiry	34
Johnston Reports	35
Interpretation of the Mandate.....	37
Notes	39
4 – History of the Bear Head Project	40
First Bear Head Proposal.....	41
Initial Contact Between the Canadian Government and Thyssen, 1985	41
Privy Council Office Perspective	42
Mr. Swain's Perspective	43
Mr. Fowler's Perspective	43
Mr. Mulroney's Perspective	44
Mr. Schreiber's Role	44
Conclusion of the First Bear Head Proposal.....	45
Second Bear Head Proposal.....	46

Agreement Between Thyssen and Mr. Schreiber, 1987	47
Nova Scotia Agreement.....	47
First Commission Payment	47
The Understanding in Principle	48
Roles of Departments and Individuals in Lead Up to the UIP	51
Atlantic Canada Opportunities Agency	51
Department of National Defence	53
Mr. Mulroney.....	53
Mr. Burney.....	54
Privy Council Office.....	54
Mr. Doucet.....	55
Government Officials' Evidence Regarding the PM's Role	58
Commission Payment on the Signing of the UIP	59
Agreement Between Mr. Doucet and Canada	61
Bear Head's Business Plan, 1988.....	63
April 1989 Budget / First Sole-Source Order Granted to GMDD,	
1989.....	63
Developments in 1990.....	64
Letter of Comfort, January 1990	64
Meeting of February 5, 1990	65
Meeting Between Mr. Schreiber and Mr. Mulroney, July 3, 1990 ...	65
Memorandum of Understanding, November 1990.....	66
Third Bear Head Proposal	67
Location of the Bear Head Project Moves to the Mainland	67
Mr. Spector's Intervention.....	67
Memorandum of Understanding, April 9, 1991.....	69
Meeting of April 10, 1991	69
Meeting of May 8, 1991	71
Second Sole-Source Contract to GMDD.....	72
Fourth Bear Head Proposal	72
Bear Head Research and Development Proposal for Montreal	73
Research and Development Proposal / Manufacturing Proposal.....	74
The End of Bear Head	77
Notes	81

5 – The Relationship.....	86
First Meeting.....	87
Mr. Schreiber’s Account.....	87
Mr. Mulroney’s Account.....	88
Leadership of the Progressive Conservative Party.....	89
Leadership Review (Winnipeg, 1983).....	89
Mr. Schreiber’s Evidence.....	89
Mr. Mulroney’s Evidence.....	90
Leadership Convention, 1983.....	90
While Mr. Mulroney Was Leader of the Official Opposition.....	90
Mr. Schreiber’s Account.....	91
Mr. MacAdam’s Account.....	91
Mr. Mulroney’s Account.....	92
Relationship While Mr. Mulroney Was Prime Minister.....	93
Mr. MacAdam’s Evidence.....	93
Mr. Schreiber’s Evidence.....	93
Mr. Mulroney’s Evidence.....	94
Mr. Doucet’s Evidence.....	96
Mr. Spector’s Evidence.....	96
Mr. Tellier’s Evidence.....	96
Correspondence and Meetings While Mr. Mulroney Was Prime Minister ...	97
Overview of Mr. Mulroney’s Evidence.....	97
Mr. Schreiber’s Agenda Entries.....	98
Meetings and Letters.....	98
Meeting on December 13, 1987.....	98
Meeting on August 23, 1989.....	98
Meeting on July 3, 1990.....	99
Mr. Schreiber’s Letter of August 27, 1990.....	99
Meetings in September 1990.....	100
Meeting on April 10, 1991.....	101
Mr. Schreiber’s Letter to Mr. Mulroney of May 9, 1991.....	102
Meeting in June 1991 in Bonn, Germany.....	102
Meeting on October 2, 1991.....	103
Meeting on May 5, 1992.....	103
Mr. Schreiber’s Letter of May 22, 1992.....	104
Meeting(s) in November 1992.....	104

Mr. Schreiber's Letter to Mr. Mulroney of March 15, 1993	105
Mr. Schreiber's Letter to Mr. Mulroney of March 16, 1993	106
Mr. Schrieber's Letter to Mr. Mulroney of March 23, 1993	106
Mr. Schreiber's Letter to Mr. Mulroney of March 24, 1993	106
Meeting on June 3, 1993	106
Meetings Between June 23, 1993, and December 8, 1994	107
Relationship Between 1995 and 1997	108
Letter of Request	108
Mr. Schreiber's Account	108
Robert Fife's Newspaper Article	109
Mr. Mulroney's Account	109
Mr. Mulroney's Lawsuit Against the Canadian Government	109
Correspondence	110
Meeting at the Savoy Hotel, February 2, 1998	110
Mr. Mulroney's Account	110
Mr. Schreiber's Account	111
Mr. Terrien's Account	112
Events of 1999–2000	113
Mr. Schreiber's Arrest	113
Mr. Schreiber's Account	113
Mr. Mulroney's Account	114
“The Mysterious Dealmaker” – <i>the fifth estate</i> , October 20, 1999	114
Mr. Schreiber's Account	114
Mr. Doucet's Account	115
Mr. Mulroney's Account	115
Termination of the Retainer	115
Royal York Hotel Meeting, May 23, 2000	116
Mr. Mulroney's Interview with Brian Stewart	116
Events and Correspondence, 2004	117
Eurocopter Proceedings	117
Correspondence	117
Events and Correspondence, 2006	118
<i>the fifth estate</i> – February 8, 2006	118
Correspondence Between Mr. Schreiber and Ministers	118
Correspondence from Mr. Schreiber to Mr. Mulroney	119
Letter of July 20, 2006	119

Letters of August 4 and August 9, 2006.....	121
Events and Correspondence, 2007	121
Mr. Schreiber's Lawsuit Against Mr. Mulroney	121
Affidavit	122
<i>the fifth estate</i> – October 31, 2007.....	122
Ethics Committee.....	122
Correspondence from Mr. Schreiber to Mr. Mulroney	123
Threat of Disclosure.....	123
William Kaplan's Interviews of Mr. Mulroney and Mr. Schreiber	124
Interviews of Mr. Mulroney	124
Interviews of Mr. Schreiber	125
Analysis of Evidence and Findings.....	126
Notes	132
6 – The Agreement	138
Centre Block Meeting, June 3, 1993.....	140
Harrington Lake Meeting, June 23, 1993	141
Mr. Smith's Account	141
Mr. Schreiber's Account	142
Mr. Doucet's Account	144
Mr. Mulroney's Account	145
Mr. Kaplan's Interview Notes Regarding the Harrington Lake Meeting.....	146
Thyssen Proposal Brief, August 26, 1993.....	147
Meeting to Promote Thyssen in Quebec, August 26, 1993.....	147
Mirabel Meeting, August 27, 1993	148
Mr. Mulroney's Account	148
Mr. Schreiber's Account	155
Other Accounts	158
Mr. Schreiber's Letter to Mr. Szabo, February 3, 2008	159
Meeting Between Canadian Government and Thyssen Representatives, September 17, 1993	159
Mr. Mulroney's Watching Brief / United Nations Concept.....	162
Mr. Mulroney's Trip to China, October 1993	164
Evidence of Mr. Bild.....	166
Queen Elizabeth Hotel Meeting, December 18, 1993.....	169
Mr. Schreiber's Account.....	169

Mr. Mulroney's Account	172
Mr. Doucet's Account.....	175
Pierre Hotel Meeting, December 8, 1994.....	175
Mr. Schreiber's Account.....	176
Mr. Doucet's Account.....	178
Mr. MacKay's Account	180
Mr. Alford's Evidence	180
Mr. Mulroney's Account	181
Mr. Mulroney's Account of Trips Before and After the Pierre Hotel Meeting	183
Savoy Hotel Meeting, February 2, 1998.....	187
Mr. Schreiber's Account.....	187
Mr. Mulroney's Account	188
Royal York Hotel Meeting, May 23, 2000.....	190
Mr. Schreiber's Account.....	190
Mr. Mulroney's Account	190
Correspondence After May 2000 and the Statement of Claim	190
Reto's Restaurant Systems International Inc.	191
Mr. Schreiber's Letter to Mr. Mulroney, July 2004.....	191
Mr. Schreiber's Letter to Mr. Mulroney, July 20, 2006.....	192
Mr. Schreiber's Letter to Mr. Mulroney, February 20, 2007	194
Mr. Schreiber's Statement of Claim Against Mr. Mulroney, March 22, 2007	195
Mr. Doucet's Notes and the Mandate Document	195
Mr. Doucet's Notes of the Meeting, October 28, 1999	195
Mr. Doucet's Account.....	196
Mr. Schreiber's Account.....	196
Mr. Doucet's Notes of the Meeting, December 26, 1999	197
Mr. Doucet's Account.....	197
Mr. Schreiber's Account.....	197
Mr. Doucet's Notes of the Meeting, January 11, 2000	198
Mr. Doucet's Account.....	198
Mr. Schreiber's Account.....	199
Meeting of February 4, 2000, and the Mandate Document	200
Mr. Doucet's Account.....	200
Mr. Schreiber's Account.....	204

Expert Analysis by Canada Border Services Agency of the	
Mandate Document	205
Mr. Mulroney's Account of the Mandate Document.....	206
Conclusion	209
Mr. Doucet's Notes of August 27, 2000	209
Mr. Doucet's Account.....	209
Mr. Schreiber's Account.....	211
Mr. Mulroney's Account	212
Conclusion	213
Mr. Doucet's Airbus Correspondence.....	213
Eurocopter Proceedings.....	215
Other Perspectives on the Services Rendered.....	217
Analysis of Evidence and Findings Regarding the Six Questions of the	
Terms of Reference	221
Questions 2 and 3.....	221
Questions 4 and 5.....	224
Question 6.....	228
Question 8.....	230
Notes	234
7 – The Source of Funds and What Happened to the Cash	239
Source of Funds	240
Mr. Schreiber's Evidence.....	240
Mr. Mulroney's Evidence	242
Navigant Evidence.....	242
Why Cash?.....	247
Mr. Schreiber's Evidence.....	247
Mr. Mulroney's Evidence	249
What Happened to the Money?	252
Conclusion	253
Source of Funds	253
Use of Cash	256
What Happened to the Cash	258
Notes	259

8 – Disclosure and Reporting	261
The Relationship Between Mr. Mulroney and Mr. Schreiber	262
The Payments.....	262
The Letter of Request and Its Aftermath.....	263
Examination Before Plea.....	265
Relationship with Mr. Schreiber	268
Settlement Agreement.....	279
Disclosure and Reporting in and After 1998.....	280
February 2, 1998 (The Savoy Hotel Meeting)	280
Mr. Mulroney’s Communications with Mr. Hladun.....	281
Mr. Hladun’s Account of the Correspondence	282
Mr. Mulroney’s Account of the Correspondence	283
Mr. Schreiber’s Perspective on the Correspondence.....	284
Mr. Schreiber’s Arrest in August 1999.....	285
<i>the fifth estate’s</i> “The Mysterious Dealmaker”	285
Mr. Lavoie’s Account	285
Mr. Mulroney’s Account.....	287
Mr. Doucet’s Meetings with Mr. Schreiber in 1999–2000	288
Mr. Mulroney’s Voluntary Tax Disclosure.....	289
Mr. Mulroney’s Account of the Voluntary Disclosure.....	290
Mr. Doucet’s Account of the Voluntary Disclosure.....	293
Mr. Schreiber’s Account of the Voluntary Disclosure.....	293
The CRA’s Voluntary Disclosure Program	293
The Retainer Provisions of the <i>Income Tax Act</i>	295
Record Keeping.....	296
Involvement of Mr. Lavoie, 1995–2007	297
Statements by Mr. Lavoie.....	297
Mr. Lavoie’s Statements to the Media in 2004	298
Mr. Lavoie’s Statements to the Media in 2007	298
Mr. Mulroney’s Perspective on the Dealings and His Disclosure.....	300
Mr. Kaplan’s Interactions with and Interviews of Mr. Mulroney	302
Mr. Kaplan’s Perspective on Mr. Mulroney’s Disclosure.....	303
Interviews of Mr. Mulroney	304
Interview of Mr. Mulroney, December 2, 1997	305
Interview of Mr. Mulroney, January 9, 2002.....	310
Interview of Mr. Mulroney, December 4, 2002	311

Interview of Mr. Mulroney, September 12, 2003	311
Interview of Mr. Mulroney, October 5, 2003.....	312
Interview of Mr. Mulroney, October 12, 2003.....	314
Interview of Mr. Mulroney, October 24, 2003.....	315
Interviews of Mr. Mulroney: October 25, 2003, and October 30, 2003.....	316
Mr. Kaplan's Articles in the <i>Globe and Mail</i> , November 2003	316
Mr. Kaplan's Interviews of Mr. Schreiber.....	321
Mr. MacAdam's Testimony	321
Analysis of Evidence.....	322
When the Agreement Was Made and When the Two Subsequent Payments Were Made	323
Non-Declaration of Reserves Under the <i>Income Tax Act</i>	324
The Examination Before Plea	324
The Advice from Mr. Lavoie	328
When Mr. Kaplan Was Writing <i>Presumed Guilty</i> and Thereafter.....	329
Voluntary Tax Disclosure	331
Notes	333
9 – Appropriateness	346
Overview	346
The Applicable Standard	347
The Role of Legislation in This Analysis	352
My Findings in Earlier Chapters	353
Appropriateness	355
The Business Dealings.....	355
The Financial Dealings.....	359
Disclosure and Reporting.....	362
Concluding Remarks on Appropriateness	364
Ethical Rules and Guidelines.....	365
<i>Guidance for Ministers</i>	365
The <i>Parliament of Canada Act</i> and Standing Orders	366
1985 Ethics Code	366
Discussion	369
Appendix 9-1: Standards Ruling	377
Appendix 9-2: Clarification Ruling.....	395
Notes	400

VOLUME 3 – POLICY AND CONSOLIDATED FINDINGS AND
RECOMMENDATIONS

10 – Correspondence.....	401
11 – Trust, Ethics, and Integrity.....	464
12 – Conclusion and Consolidated Findings and Recommendations	565
Appendices	
1 Order in Council and Amendments.....	585
2 Rules of Procedure and Practice	592
3 Commission Organization Charts.....	601
4 Sample Confidentiality Undertakings.....	603
5 Exhibit List.....	610
6 Commission Notices.....	613
7 Commissioner’s Opening Statement, Thursday, October 2, 2008.....	617
8 Treasury Board, Rules for Participant Funding.....	625
9 Rulings on Applications for Standing and Funding in Part I	631
10 Rulings on Applications for Standing and Funding in Part II	640
11 Protocol for Document Protection Between Commission and Canada ...	657
12 Documents Protected by Cabinet Confidence – Order in Council 2009-534	661
13 Sample Notice Under Section 13 of <i>Inquiries Act</i>	674
14 Sample Subpoena.....	676
15 Sample Declaration.....	679
16 Schedule of Witnesses at Inquiry into Facts.....	680
17 Ruling on Application Filed by Mr. Schreiber, May 11, 2009 (Excerpt from Transcript), June 3, 2009	682
18 Part II, Policy Review: Public Consultation Paper	687
19 Part II, Policy Review: Schedule – Expert Policy Forum Participants....	710
20 Expert Policy Forum – Issues	711
21 Counsel for the Commission, Parties, and Witnesses	716
22 Request to Parliamentary Counsel and Response.....	718
23 <i>Conflict of Interest Act</i>	724
24 Conflict of Interest Code for Members of the House of Commons	759
Acknowledgements.....	775
Commissioner and Commission Staff.....	781

Abbreviations and Acronyms

ACBA	Advisory Committee on Business Appointments
ACOA	Atlantic Canada Opportunities Agency
ADM	Archer Daniels Midland
AMPMQ	Association des membres de la police montée du Québec
AG	Attorney General of Canada
BHI	Bear Head Industries
CBC	Canadian Broadcasting Corporation
CBSA	Canada Border Services Agency
CCRA	Canada Customs and Revenue Agency
CIA	<i>Conflicts of Interest Act</i>
CIMS	Correspondence and Issues Management System
CISD	Corporate Information Services Division
CITIC	China International Trust and Investment Company
COCOM	Coordinating Committee on Multilateral Export Controls
CPAC	Cable Public Affairs Channel
CRA	Canada Revenue Agency
DDGM	(or GMDD) General Motors Diesel Division
DFAIT	Department of Foreign Affairs and International Trade
DND	Department of National Defence
DRIE	Department of Regional Industrial Expansion
ECS	Executive Correspondence Services
ECU	Executive Correspondence Unit
FAA	<i>Federal Accountability Act</i>
FC	Federal Court
FCA	Federal Court of Appeal
FCTD	Federal Court Trial Division
FDCI	Fred Doucet Consulting International
FORD-Q	Federal Office of Regional Development – Quebec
GCI	Government Consultants International
GM	General Motors
GMDD	(or DDGM) General Motors Diesel Division

IAG	International Assistance Group (Department of Justice)
IAGFPS	International Assistance Group Federal Prosecution Services
IAL	International Aircraft Leasing
ISTC	Industry, Science and Trade Canada
LAV	light armoured vehicle
LOR	letter of request
MBAV	multi-purpose base armoured vehicle
MBB	Messerschmitt-Bolkow-Blohm GmbH
MBM	Martin Brian Mulroney
MOU	memorandum of understanding
MP	member of parliament
MP Code	Conflict of Interest Code for Members of the House of Commons
MRCV	multi-role combat vehicle
NATO	North Atlantic Treaty Organization
OECD	Organisation for Economic Co-operation and Development
PC	Progressive Conservative
PCO	Privy Council Office
PMC	Prime Minister's Correspondence Unit
PMO	Prime Minister's Office
POH Code	Conflict of Interest and Post-Employment Code for Public Office Holders
RSC	Revised Statutes of Canada
RCMP	Royal Canadian Mounted Police
SBC	Swiss Bank Corporation
T-form	transmittal form
UIP	understanding in principle
UN	United Nations
USD	US dollars
WebCIMS	Web Correspondence and Issues Management System



The Integrity of Government

The genesis of this Inquiry is the relationship between a former prime minister of Canada, the Right Honourable Brian Mulroney, and Karlheinz Schreiber, a German-Canadian businessman who is now implicated in questionable transactions that took place in Germany. The relationship spanned two decades and included a secret agreement between the two men approximately two months after Mr. Mulroney left the office of prime minister and was sitting as a member of parliament. In November 2007 Mr. Schreiber filed an affidavit against Mr. Mulroney which contained allegations about their business and financial dealings. When the affidavit became public, Prime Minister Stephen Harper sought the advice of Dr. David Johnston, the president and vice-chancellor of the University of Waterloo, as to the terms of a potential public inquiry relative to those dealings. Dr. Johnston provided two reports to Prime Minister Harper, including recommendations for the terms of reference for a public inquiry. He specified that, in his view, the inquiry should be limited in nature and focused on the business and financial dealings between Mr. Schreiber and Mr. Mulroney which occurred in 1993 and 1994.

I was appointed by Order in Council PC 2008-1092, dated June 12, 2008, to conduct an inquiry into certain allegations respecting the business and financial dealings between Mr. Schreiber and Mr. Mulroney. The recommendations made by Dr. Johnston as to the terms of reference for a public inquiry were adopted by the Governor in Council and formed the Terms of Reference by which I was bound in conducting this Inquiry.

Although it focuses on the actions of former prime minister Brian Mulroney, this Inquiry is essentially about the integrity of government and of those who have the privilege of governing. In particular, it examines how compliance with the constraints on the holders and former holders of high public office relate to that integrity, and the adequacy of those constraints as they pertain to the period of transition from public office to the private sector. The subject of the Inquiry and the policy questions I have been asked to address are of crucial importance because of the degree of trust and confidence Canadians repose in those whom they elect to govern.

Integrity is the cornerstone of good governance. It supports a level playing field for the relationship between government and business, and it is essential to maintaining public trust in government. The achievement of a culture of integrity requires coherent efforts to update standards, provide guidance, and monitor and enforce these guidelines in daily practice. It is my firm belief that Canadians are entitled to expect from those who are elected to govern – particularly the holders of high office – exemplary conduct in their professional and personal lives. The same standards of conduct should apply to those who are making the transition from public life to private life, so that the integrity of government can be assured.

Evidently, in the early stages of his tenure as prime minister, Mr. Mulroney shared my view as to the standard of conduct to be met by the holders of public office. At that time he said that, to function effectively, the government and the public service of a democracy must have the trust and confidence of the public they serve. To reinforce that trust, he stated that it is imperative that government be guided by the highest standards of conduct. Subsequently, Mr. Mulroney made it clear that ministers serving in the government he led must act in both their official and their personal capacities in a manner “so scrupulous that it will bear the closest public scrutiny.”

The Inquiry was conducted in two phases. The first phase dealt with my hearing testimony regarding the factual matters raised in the Terms of Reference as set forth in the Order in Council PC 2008-1092. The second phase dealt with the policy issues identified in the Terms of Reference. Before the Factual Inquiry began, I issued a ruling in which I determined that I would assess the appropriateness of Mr. Mulroney’s conduct by applying the standards that he himself had established. I said I would make a finding of inappropriateness “only if there is credible evidence that Mr. Mulroney acted in a manner that falls short of conduct that, objectively, is so scrupulous that it can bear the closest possible scrutiny.”

In my Report, I canvass the evidence I find to be relevant to the issue or issues covered by each particular chapter. I then proceed to analyze that evidence, draw conclusions, and make findings based on the evidence. The Report begins with a discussion, contained in the next two chapters, about the concerns that led to establishing this Inquiry. Chapter 2 also outlines the various process issues I encountered and dealt

with leading up to and during both phases of the Inquiry. Chapter 3 continues with a discussion of the mandate of the Inquiry as set by the Terms of Reference.

My Report necessarily revolves around Mr. Mulroney, Mr. Schreiber, and what has come to be known as the Bear Head Project. Mr. Mulroney, in his capacity as prime minister of Canada, had official dealings with Mr. Schreiber, who was actively promoting the Bear Head Project and lobbying the Government of Canada on behalf of the project over the course of several years. I examine Mr. Mulroney's conduct while he was prime minister and thereafter, because, shortly following his departure from the highest office in the land, Mr. Mulroney entered into secretive business and financial dealings with Mr. Schreiber allegedly involving the Bear Head Project.

In my Report, I address the Bear Head Project from various perspectives as it relates to the business and financial dealings between Mr. Mulroney and Mr. Schreiber. Because of this approach, readers will note some overlap in the evidence. The evidence I heard was relevant to more than one issue, and it is therefore referred to in more than one chapter of the Report. This organization seemed to be the most effective way to canvass evidence relevant to each of the questions I was asked to answer in the Terms of Reference.

Because the Bear Head Project is so important in terms of the relationship between Mr. Mulroney and Mr. Schreiber and also their business and financial dealings, I devote Chapter 4 to an examination of the history of that project. Over the multi-year lifespan of the Bear Head Project, concepts relating to it changed. The initial proposal, for example, was to construct a manufacturing plant for the production of military vehicles on the Bear Head Peninsula on Cape Breton Island, Nova Scotia. When that proposal failed to materialize, its backers proposed that the plant be built on the Nova Scotia mainland. When that was deemed unacceptable, it was proposed that the plant be located in the east end of Montreal. Despite the changes that occurred over time, there was always one constant – namely, a desire on the part of the project's promoters to obtain assistance and funding from government.

Following my review of the history of the Bear Head Project, I turn my attention in Chapter 5 to a consideration of the relationship between Mr. Mulroney and Mr. Schreiber in the context of their business and financial dealings. That relationship goes back to the 1980s, before Mr. Mulroney was elected to the House of Commons. I examine correspondence exchanged between the two men as well as several meetings Mr. Schreiber had with Mr. Mulroney before, during, and after Mr. Mulroney's tenure as prime minister, culminating in a meeting requested by Mr. Mulroney that took place at the Savoy Hotel in Zurich, Switzerland, on February 2, 1998.

In Chapter 6, I delve into the agreement these men made subsequent to Mr. Mulroney's resignation as prime minister. I consider evidence with respect to Mr. Schreiber's ongoing efforts to promote the interests of the Bear Head Project. The evidence I refer to in this chapter also involves a meeting that occurred at the prime

minister's country residence at Harrington Lake exactly one day before Mr. Mulroney's resignation as prime minister became effective. My review of the evidence deals as well with three subsequent meetings. During the first meeting an agreement was reached by Mr. Schreiber and Mr. Mulroney. At each of those three meetings, Mr. Schreiber gave Mr. Mulroney a substantial amount of cash concealed in an envelope. I note in the course of reviewing the evidence a great deal of contention between Mr. Schreiber and Mr. Mulroney regarding both the date on which the agreement between them was concluded and the nature of the agreement. My purpose in considering and analyzing the evidence respecting the meeting at Harrington Lake and the three subsequent meetings between Mr. Mulroney and Mr. Schreiber where cash exchanged hands was to ascertain the exact nature of the agreement they reached. In this same chapter, I also review and analyze the evidence respecting the services Mr. Mulroney asserts he provided to Mr. Schreiber pursuant to the agreement between them.

In Chapter 7, I deal with the source of the funds paid by Mr. Schreiber to Mr. Mulroney in the form of Can\$1,000 bills and what happened to those funds after Mr. Mulroney received them. As a result of the work by Navigant Consulting, a firm of forensic accountants, the relatively complicated evidence about the source of the funds was clarified. Navigant's task to trace the cash was made difficult when the governments of Switzerland and Germany refused to allow the Commission access to Mr. Schreiber's banking documents that were provided to the Government of Canada pursuant to letters of request in the 1990s. In this chapter I outline how Mr. Mulroney failed to follow standard business practice: he did not deposit any of the cash he received from Mr. Schreiber into a bank or a financial institution, a simple act that would have created a paper trail. Moreover, he made no record of how he disposed of the \$1,000 bills he received from Mr. Schreiber.

In Chapter 8, I canvass various opportunities Mr. Mulroney had to disclose and report on his business and financial dealings with Mr. Schreiber. This chapter examines the evidence pertaining to the complete lack of documents or any type of record as to the agreement they reached, the three cash payments made by Mr. Schreiber to Mr. Mulroney, or what Mr. Mulroney did with the cash once he received it. I also consider evidence about the attempts made by or on behalf of Mr. Mulroney to prevent any disclosure of his business and financial dealings with Mr. Schreiber.

Chapter 9 deals with an assessment of whether Mr. Mulroney's conduct regarding his business and financial dealings with Mr. Schreiber was appropriate. As I noted earlier in this chapter, in making this assessment, I measured Mr. Mulroney's conduct against a standard that he had himself established shortly after he became prime minister in 1984. As Mr. Mulroney recognized when he set the standard of behaviour for those who served with him in government, particularly the holders of high public office, more is expected by Canadians of those in whom trust and confidence are placed. In other words, the holders of high public office must live up to an elevated standard of

behaviour and conduct if the integrity of government is to be preserved and enhanced. In this chapter, I also explore the ethical rules that were in place at the time the business and financial dealings between Mr. Mulroney and Mr. Schreiber occurred, with a view to determining whether there was any breach by Mr. Mulroney.

In Chapter 10, I turn my attention to another issue raised by the Terms of Reference. This chapter is devoted to an examination of how certain correspondence addressed to Prime Minister Harper from Mr. Schreiber was handled by the Privy Council Office (PCO) and by the Prime Minister's Office and whether the PCO should have adopted different procedures for the handling of the prime minister's correspondence. At the conclusion of this chapter, I make some modest recommendations for change.

The final analytical chapter of my Report, Chapter 11, consists of a thorough study of the ethics regime currently in place covering elected officials and other holders of public office. As directed by the Terms of Reference, I examine the adequacy of ethical constraints currently imposed on the holders of public office as they make the transition from public service to the private sector. In the course of that chapter, I make several recommendations with regard to this issue, again with the view of ensuring the integrity of government. Chapter 12 gives my conclusions and consolidates my findings and recommendations.

The Inquiry Process

The Scope and Approach of the Commission

Under the *Inquiries Act*, the Governor in Council may, whenever it deems it expedient, cause an inquiry to be made into, and concerning, any matter connected with the good government of Canada or the conduct of any part of the public business of the government.¹

A commission of inquiry, as an agency of the executive branch of government, must operate within the parameters established by the Governor in Council. Therefore, my jurisdiction was confined to responding to those questions and directions set forth in the Terms of Reference contained in Order in Council PC 2008-1092 dated June 12, 2008. This Order in Council is set out in Appendix 1 at the end of the Report.

The origin of this Inquiry revolves around an affidavit sworn by Karlheinz Schreiber in a lawsuit he commenced against the Right Honourable Brian Mulroney. In that affidavit, Mr. Schreiber made certain factual allegations pertaining to business and financial dealings he had with Mr. Mulroney.

On November 14, 2007, after learning of the allegations, Prime Minister Stephen Harper appointed Dr. David Johnston, the president and vice-chancellor of the University of Waterloo, as an independent adviser, to review Mr. Schreiber's allegations with a view to providing the government with recommendations for an appropriate mandate for a public inquiry. Dr. Johnston reported to the prime minister

on January 9, 2008. On March 19, 2008, Prime Minister Harper reappointed Dr. Johnston as a special adviser to finalize recommendations on the mandate for a public inquiry, taking into account his first report as well as the hearings conducted by the House of Commons Standing Committee on Access to Information, Privacy and Ethics (Ethics Committee). The recommendations in Dr. Johnston's second report to the prime minister were adopted by the government and became the Terms of Reference for this Inquiry. This process is discussed more fully in Chapter 3, The Commission's Mandate.

THE NATURE OF INQUIRIES

Fundamental Principles

There are many ways to conduct a public inquiry. Each inquiry raises its own issues and has a unique mandate as defined in its Terms of Reference. However, certain fundamental principles apply to every inquiry. In his 2002 report on the Walkerton water tragedy, Associate Chief Justice Dennis O'Connor of the Ontario Court of Appeal articulated the four principles that guided him in the conduct of that provincial inquiry: "thoroughness, expedition, openness to the public and fairness."² My counsel and I adopted these principles in the conduct of this Inquiry. The principles guided every decision taken at every stage of the Inquiry: from the development of Rules of Procedure and Practice to the production and review of documents, the design and maintenance of a Commission website, and the conduct of the hearings.

Although each inquiry's mandate differs, as investigative bodies they share the common goal of making findings of fact and recommendations about their respective subject matter. As Supreme Court of Canada Justice Peter Cory explained in *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*:

One of the primary functions of public inquiries is fact-finding. They are often convened, in the wake of public shock, horror, disillusionment, or scepticism, in order to uncover "the truth". Inquiries are, like the judiciary, independent; unlike the judiciary, they are often endowed with wide-ranging investigative powers. In following their mandates, commissions of inquiry are, ideally, free from partisan loyalties and better able than Parliament or the legislatures to take a long-term view of the problem presented. Cynics decry public inquiries as a means used by the government to postpone acting in circumstances which often call for speedy action. Yet, these inquiries can and do fulfil an important function in Canadian society. In times of public questioning, stress and concern they provide the means for Canadians to be apprised of the conditions pertaining to a worrisome community problem and to be a part of the recommendations that are aimed at resolving the problem. Both the status and high public respect for the commissioner and the open and public nature of the hearing help to restore public confidence not only in the institution or situation

investigated but also in the process of government as a whole. They are an excellent means of informing and educating concerned members of the public.³

Justice Cory also stated: “It is crucial that an inquiry both be and appear to be independent and impartial in order to satisfy the public desire to learn the truth.”⁴

Justice Cory’s decision is significant. It permitted a public inquiry into a tragedy that resulted in the deaths of 26 miners to proceed notwithstanding the fact that certain individuals – managers of the mine – had been criminally charged in connection with the explosion that left the 26 miners trapped. Justice Cory balanced the interest of permitting the inquiry to proceed against the interest of successfully pursuing the criminal charges. In light of the magnitude of the tragedy, Justice Cory found that it was in the public interest that the inquiry not only proceed but that it do so expeditiously.

When I was appointed Commissioner, I understood it was imperative that I take, and be seen to have taken, my role very seriously as an independent, unbiased fact-finder who would report to the public on the matters investigated by the Commission. Therefore, whenever I make findings of fact in this Report, I do so having considered all the evidence touching on a fact in issue.

An Inquiry Is Not a Trial

My Terms of Reference preclude me from expressing any conclusion or recommendation regarding the civil or criminal liability of any person. Issues of criminal or civil liability are best left for trials in courts of law, where the parties are afforded rights that provide protection they may not have in the course of a public inquiry. A public inquiry, while investigative in nature, is no substitute for a police investigation or the criminal process that may be implicated following such an investigation, where there are specific allegations of misconduct against one or more individuals. A commissioner is nonetheless charged with getting to the bottom of the matters under investigation. As part of that task, a commissioner may make findings of misconduct. As Justice Cory put it in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)* (Krever decision), “a commissioner may make a finding that there has been a failure to comply with a certain standard of conduct, so long as it is clear that the standard is not a legally binding one such that the finding amounts to a conclusion of law pertaining to criminal or civil liability.”⁵

The significance of the Krever decision is that commissioners heading public inquiries are now precluded from making findings of criminal or civil liability. Indeed, in my Terms of Reference, specific mention is made of that fact.

A public inquiry is not subject to the rules of evidence or procedure that apply to civil or criminal trials. Nonetheless, commissions of inquiry must be procedurally fair, particularly where the events in question or the conduct at issue is, as it was in this Inquiry, focused on one or a number of individuals.

Getting Started

APPOINTMENT OF COMMISSION COUNSEL

One of my first tasks as Commissioner was to appoint Commission counsel. I approached the appointing of Commission counsel as a crucially important decision because they would be involved at every step and would work closely with me throughout the investigative and hearing stages of the Inquiry. Within a short period of time following my appointment as Commissioner on June 12, 2008, I retained Richard Wolson as the Commission's lead counsel, and Nancy Brooks, Evan Roitenberg, and Giuseppe Battista as senior Commission counsel.

Senior counsel could not have done their job without the support of able junior counsel: Sarah Wolson, Myriam Corbeil, Peter Edgett, and Martin Lapner. I retained junior counsel to work hand in hand with senior counsel. They reviewed the thousands of documents produced to the Commission by the government and by parties who had been granted standing. Junior counsel worked long hours to accomplish their task. They carried out legal research as required. They prepared books containing relevant documents for each interview and for every witness who testified at the hearing. Copies of those books of documents were provided in a timely manner to counsel for all parties at the Inquiry.

For several weeks immediately before the commencement of the hearings in the Factual Inquiry and while those hearings were under way, the Commission had the benefit of additional legal assistance from Heather Baker and Paul-Mathieu Grondin, who aided in document review and preparation for the hearings.

At every step of the Inquiry, senior and junior counsel worked as a seamless team, assisting me in carrying out my role. It is difficult to find words that would adequately express my appreciation for the superb job done by a team of wonderful, hard-working, conscientious, and extremely competent counsel.

Role of Commission Counsel

The role of counsel to a commission of inquiry is different from that of lawyers who represent parties and appear before a judge in court. Unlike a court trial, an inquiry conducted by a commission is not an adversarial process. Commission counsel are the commissioner's lawyers. They have been described by other commissioners as their alter ego. That description is particularly apt. Commission counsel provide advice and assist the commissioner in the conduct of the investigation and the inquiry generally. In the same way that the commissioner must be objective and impartial, so too commission counsel must not be, and must not be seen to be, adverse in interest to any witness or party. Associate Chief Justice O'Connor has described the role as follows:

The role of commission counsel is quite different from that of a lawyer in most other legal proceedings ... The difference stems from the relationship between commissioner and commission counsel. That relationship is altogether different from the usual one between a judge and a lawyer. The commissioner appoints his or her counsel and it is often said, aptly I think, that a commission counsel becomes the alter ego of the commissioner.

As a result, commission counsel's role is not to advance any particular point of view, but rather to investigate and lead evidence in a thorough, but also completely impartial, and balanced, manner. In this way, the commissioner will have the benefit of hearing all of the relevant facts or evidence unvarnished by the perspective of someone with an interest in a particular outcome.⁶

By investigating the subject matter of the inquiry and leading evidence at the hearings, commission counsel assist the commissioner in carrying out his or her mandate. Throughout, they act on behalf of and under the instructions of the commissioner.

Even though commission counsel do not advance a particular point of view, it is imperative that they be vigorous and assertive in their examination of witnesses. At the end of the evidentiary portion of the inquiry, the commissioner must have as complete a picture of the factual matters as possible on which to base the findings of fact. If a witness is evasive or gives conflicting testimony, commission counsel must be guided by their obligation to assist the commissioner in discovering the truth. They must probe the witness's testimony and carry out a thorough examination. Although commission counsel should never become partisan, they must nonetheless hold their ground and persist.

RULES OF PROCEDURE AND PRACTICE

My counsel studied numerous precedents for Rules of Procedure and Practice created by other commissions of inquiry and settled on the form of rules that appeared to respond to the Commission's mandate and Terms of Reference, while respecting the underlying principles of being thorough, expeditious, open to the public, and fair. Commission counsel discussed the draft with me, refinements were made, and the draft Rules were then posted on the Commission website.

As provided for in the Rules of Procedure and Practice, the Commission proceedings were divided into two parts. Part I, the Factual Inquiry, focused on questions relating to the business and financial dealings between Mr. Schreiber and Mr. Mulroney. These questions are set out in paragraph (a) numbers 1 through 16 (except for number 14) of the Inquiry's Terms of Reference. Part II, the Policy Review, focused on the questions set out in paragraph (a) numbers 14 and 17.

The draft Rules of Procedure and Practice applied to the hearings for standing and funding in the Factual Inquiry. After I had decided who would be granted standing as

parties to the Factual Inquiry, Commission counsel met with counsel for those parties and sought their input on the draft rules. In the course of their useful exchange, various suggestions were made, and they were presented to me by Commission counsel. I made the final decision on any issues where there was no consensus among Commission counsel and counsel for the parties. The final version of the Rules of Procedure and Practice was then posted to the Commission's website.

In my view, this consultative manner of proceeding resulted in a better set of Rules. A copy of the final Rules is attached as Appendix 2 to the Report.

APPOINTMENT OF A RESEARCH DIRECTOR

I appointed Professor Craig Forcese of the Faculty of Common Law, University of Ottawa, as the Commission's research director for the Policy Review. Professor Forcese worked closely with Commission counsel and me in the structuring of the Policy Review and the hearings for this part of the Inquiry's work.

ADMINISTRATIVE MATTERS

The Role of the Privy Council Office

Soon after I was appointed Commissioner, I met with representatives of the Privy Council Office (PCO), who provided briefings and advice on the powers and authorities of commissioners, security issues, and budgetary matters. The PCO's briefings were helpful, but did not fully prepare me for the scale and scope of administrative issues that would confront me or the Commission. The PCO explained that I would need to hire a director of administration to oversee the administrative and financial aspects of the Commission. The director of administration would liaise with the PCO with respect to issues pertaining to contractual and procurement matters; security; the hiring of support staff; and the finding and equipping of office space.

An enormous number of administrative and financial tasks had to be accomplished in a short time. In hindsight, I can see now that it would have been helpful to me to receive, upon my appointment as Commissioner, a more detailed briefing manual describing the myriad administrative issues that typically confront federal commissions of inquiry. Although I did receive a briefing package from the PCO, I was largely dependent on my director of finance and administration for information on such matters. However, given the scope of administrative and financial issues that confronted the Commission and the number of related decisions I was required to make, I spent an inordinate amount of time on administrative matters. I found this aspect of the Commission to be time-consuming and somewhat frustrating.

Because most commissioners, upon appointment, will not be familiar with the intricacies of government procedures and requirements or with the various administrative functions to be performed and the personnel required to perform those

functions relative to the inquiry, I think it would be useful for the PCO to develop a comprehensive briefing binder for commissioners. I recommend that the briefing binder describe in detail the PCO's roles and responsibilities vis-à-vis commissions of inquiry, the type of government support that is available to commissions, and the terms and conditions pursuant to which that support will be provided. In my view, the briefing binder should explain in detail the administrative and financial management aspects of a federal commission of inquiry. Sample organizational structures from past inquiries could be included to assist the commissioner in assessing the commission's personnel and infrastructure needs in his or her particular circumstances.

Where, as with this Commission of Inquiry, the Governor in Council directs the commission, in the Terms of Reference, to use the government's document management system, a commissioner must be mindful of the need for appropriate infrastructure and support to fulfill this requirement. In our case, technological issues, combined with security issues related to the document management system, caused significant delays before Commission counsel were able to review documents. Because the Commission would be receiving documents classified as "Secret," two separate computer networks had to be established – one Secret and one "Protected B" – and two computers had to be acquired for each person who would have access to classified documents. The Protected B, or open, system handled email, access to the Internet, and the normal documentation of any inquiry. The Secret, or closed, system held the document management software and the classified documents.

There were delays implementing the computer systems required to accommodate the document management system, including the fact that the majority of the documents to be provided to the Commission and then reviewed were not, at that time, kept in a format compatible with the directed document management system.

As to the structure of the office and the staff required, it appears that each commission is expected to start from the ground up. Commissions are necessarily independent from government and should be free to choose their own structure and processes. However, it would have been useful to have had sample organizational charts identifying the jobs and tasks that may arise in the course of the inquiry. Such charts would, I think, be particularly helpful where a commission has a fixed deadline for the rendering of its report. Two charts for this Commission are attached as Appendix 3.

Administrative Staff

At the outset, I retained the services of Mary Ann Allen as director of finance and administration of the Commission. The Commission benefited from her experience with other public inquiries and her knowledge of government expenditure and administrative guidelines. Denis Lafrance was appointed the deputy director of finance and administration and, among other things, made sure the Commission complied with all government policies in submitting its expenses for approval. Mr. Lafrance was

assisted by Lise Scharf. Alan Quinn, as manager of contracting and intervenor funding, handled all contracting matters for the Inquiry.

The Commission also could not have functioned without its senior administrative officer, Gail Godbout, who took responsibility for all administrative aspects of the Commission's operations, overseeing the myriad details for the running of the Inquiry hearings, ably assisted by Anne Chalmers. Tim Boytel and Marie Dionne provided administrative support, including copying vast quantities of documentation for the Commission's use. Gilles Desjardins managed the registry, establishing a records management system to ensure that the Commission's correspondence and records were organized in a manner that would assist in the archiving required under the Commission's Terms of Reference.

My executive assistant, Mary O'Farrell, provided me with administrative support throughout, for which I thank her. I am most grateful for the services provided to the Commission by all these individuals.

Offices / Hearing Room

As noted earlier, I was appointed Commissioner on June 12, 2008. Temporary space was made available to the Commission while its permanent space, located at 427 Laurier Avenue West in Ottawa, was prepared. The time required to fit up that space and install security features meant that we were not able to move into 427 Laurier until August 1, 2008. Even then, installation of the security features was ongoing.

Once the Commission was established at 427 Laurier, it was apparent that the space dedicated to the Commission was too small to accommodate the number of counsel and support staff required. I was aware that the Commission would be retaining forensic accountants who, because they would be working with classified documents, would, of necessity, be working at the Commission's premises. Therefore, further space at 427 Laurier was acquired to meet the Commission's needs.

For the hearings, the Commission was fortunate to be able to rent facilities at 111 Sussex Drive. The hearings were conducted in Victoria Hall, a large room forming part of 111 Sussex Drive, with excellent lighting and acoustics. These facilities, which have been used by previous commissions, were ideally suited to the Commission's needs. Victoria Hall easily accommodated me, Commission counsel, Commission administrative staff, counsel for the parties, witnesses, media, and the public.

The Commission's proceedings were available in both official languages with continuous simultaneous translation occurring. Facilities for interpreters were established in an area on the second floor, with a view of the proceedings. Separate areas were rented for Commission counsel and staff, with space for copying equipment and computers. The Commission also rented space for a media room and for counsel for the parties and their clients.

Some of the Commission's proceedings were televised live by the national networks.

All were recorded by CPAC. Interested members of the public were able to view the Commission's daily proceedings on CPAC's website or via a link to that site on the Commission's website; the hearings remain available at the time of writing on the CPAC website under "Inquiries on Demand." The Commission, as part of its archives, has acquired a full set of the DVDs of the proceedings, for which I thank CPAC.

DOCUMENT MANAGEMENT

Confidentiality Undertakings

All staff, Commission counsel, and contractors were required to execute confidentiality undertakings. In addition, all parties, witnesses, and their counsel were required to execute confidentiality undertakings before they were provided with any Commission documents. Samples of the confidentiality undertakings are set out in Appendix 4.

Document Management Software

The Commission's Terms of Reference required the Commission to use the automated document management program specified by the Attorney General of Canada, a commercially available program called "Ringtail." All documents produced to the Commission by the Attorney General of Canada were provided in Ringtail format and loaded onto the Commission's closed computer network.

As my counsel came to learn, Ringtail is one of the most powerful programs for document review, production, and management. It allows users to label, sort, tag, and search a database containing millions of documents. We came to rely greatly on Ringtail. It allowed Commission counsel to sort through the thousands of documents, to flag those that were relevant to the issues under review, and to choose those that were relevant to a specific issue or witness. Without Ringtail or a program like it, the Commission would have found it difficult, if not impossible, to carry out its mandate.

The Commission retained the services of Commonwealth Legal, which holds the licence to market Ringtail in Canada, to provide advice and training on setting up and managing the database effectively. It was also decided that documents produced by parties with standing and by witnesses would be shipped to Commonwealth Legal to be scanned into Ringtail and indexed.

The Commission employed two information technology specialists, Myles Chalmers and Andrew Smith, who were instrumental in setting up and maintaining the closed and open computer networks required to accommodate the documents we received. Once the systems were up and running, we had very few technological glitches, thanks to their efforts.

Document Manager and Archives

The Commission retained a document manager, who catalogued all documents produced to the Commission. This key position was filled in an exemplary manner by Marjorie Vendrig, a library technician. Ms. Vendrig trained on Ringtail and worked closely with Commission counsel, the Commission's information technology specialists, and the administration to ensure that all documents were treated appropriately. She coordinated shipments of documents to Commonwealth Legal for scanning. She also organized the distribution of numerous binders of documents in advance of witness interviews and testimony at the hearings. Each hearing day, she and Commission support staff ensured that the needed documents were delivered to counsel tables, the registrar, the interpreters, and others as required.

The Terms of Reference directed me to file the papers and records of the Inquiry with the clerk of the privy council as soon as reasonably possible after the conclusion of the Inquiry. At the end of the process, the document manager coordinated the organization and cataloguing of documents that were to be sent to the clerk, in accordance with this requirement.

Documents at Hearings

Following consultations with Commission counsel, I decided that hearings in the Factual Inquiry would proceed using paper exhibits rather than electronic documents. Although the Rules of Procedure and Practice allowed a party to apply for an *in camera* hearing, no such applications were made and all exhibits were placed on the public record.

As noted earlier, for each party or witness who testified, Commission counsel produced one or more binders of documents relevant to that party or witness. As each binder of documents became an exhibit and part of the record of the Commission, a copy of the binder was made available to members of the media in the hearing room so they could review the documents and follow along as materials were referred to in the course of testimony.

All exhibits filed at the hearing were posted as soon as possible on the Commission's website. (Unlike some other commissions of inquiry, all the exhibits filed in this Inquiry were public documents.) Given the public nature of the Inquiry and the importance of the Internet in providing the public with access to the Commission's proceedings and evidence, it was, and is, my view that the exhibits should be posted on the web. To the best of my knowledge, this Commission was the first to post all public exhibits on its website. The Exhibit List is set out at Appendix 5.

COMMUNICATIONS AND MEDIA APPROACH

Communication with the media is an essential aspect of the public nature of a commission of inquiry because the media are the conduit by which most members of the public learn about a commission's work. As I noted in my remarks at the end of the hearings in the Factual Inquiry, while the Commission's website permits the public to have access to the work of the Commission, it is of equal importance that the public be able to know what is going on in the hearing room. Even though the public could watch and listen to the hearings of the Commission on a daily basis through CPAC or the Commission's website, not all members of the public were aware of that fact. The media therefore played an important role by representing the eyes and the ears of the public and shining a light on the Commission's proceedings. Sunlight being a good disinfectant, we gave high priority to keeping the media informed about the Commission's schedule, procedures, and work.

Given the importance of communication with the media, one of my first acts as Commissioner was to find a communications officer who had extensive contacts with reporters and others in the media. I retained Barry McLoughlin, president and chief executive officer of McLoughlin Media, to act as liaison between the Commission and the media, to handle media calls, to write media advisories and press releases, and to provide the Commission with strategic communications advice.

Early on, in consultation with Commission counsel and the communications officer, I decided that neither Commission counsel nor I would grant interviews during the Inquiry. All communications with the media would be through the communications officer, through the Commission website, or through statements made by either me or Commission counsel on the record at the hearings. This approach seemed to work well.

I am indebted to Mr. McLoughlin and the employees of McLoughlin Media for their superb performance as the Commission's communications consultants and, in particular, for assisting the media as and when required.

Notices of Hearings

The Commission published notices of hearings in newspapers across the country, in both official languages, as required by government policy. Copies of all the notices that were published during the course of the Inquiry are set out in Appendix 6.

COMMISSION WEBSITE

General Approach

We treated the Commission's website as its principal link to the public. The website was envisaged to be a permanent and comprehensive record of Commission news, notices, documents, and decisions. I expect that a copy of the website will be preserved with Library and Archives Canada.

The website was set up shortly after I was appointed and was continually updated as new materials and documents became available. The first posting was the Commission's Terms of Reference. The draft Rules of Procedure and Practice, and media advisories, notices of hearings, and the like, followed soon after. Before the Factual Inquiry hearings got under way, we ensured that the website contained all news releases, notices, a tentative overall schedule for the Commission (including tentative dates for significant events in the Factual Inquiry and the Policy Review), motion materials filed by the parties, and rulings on pre-hearing motions. My opening statement, made on October 2, 2008, was posted on the website in both languages and is attached as Appendix 7.

Posting of Documents and Transcripts

The Terms of Reference directed me, in respect of any portion of the Inquiry conducted in public, to ensure that members of the public could, simultaneously, in both official languages, communicate with the Commission and obtain services from it, including any transcripts of proceedings that had been made available to the public. Having received advice from Commission counsel, I interpreted this to mean that, although materials filed by the parties and exhibits could be posted on the Commission's website in the language in which they were filed without being translated, all documents produced by the Commission were to be posted on the website in both official languages. I believe the posting of all such documents was an essential aspect of the website even though the need to translate the documents into both official languages resulted in slight delays in posting Commission-produced materials, such as rulings on motions and transcripts of the hearings. We made translation of the transcripts a priority so that they could be posted as quickly as possible.

As noted, materials that the parties filed with the Commission, as well as all exhibits, were posted on the Commission's website in the language in which they were filed. We made the decision not to translate all these documents for two reasons: the volume of materials filed would have made the cost of translation prohibitive, and there would have been significant delays in getting the material posted.

Standing and Funding

MOTIONS FOR STANDING AND FUNDING IN PART I – FACTUAL INQUIRY

By virtue of paragraph (f) of the Commission's Terms of Reference, I was given authority to recommend to the clerk of the privy council that funding be provided to any person granted standing. Such a recommendation had to be in accordance with the Terms and Conditions – Contribution Program for Participant Funding (Terms and Conditions), approved by the Treasury Board. A copy of the Terms and Conditions is included as Appendix 8.

The motions for standing and funding in the Factual Inquiry were heard on October 2, 2008. To obtain standing as a party, an applicant had to demonstrate to my satisfaction that she, he, or it was directly and substantially affected by the matters investigated in the course of the Factual Inquiry or portions thereof. Applications for party standing were received from Mr. Mulroney, Mr. Schreiber, and the Attorney General of Canada. Applications for standing and funding were received from Fred Doucet, the Bloc Québécois, and several individuals (Yohan Cherrier, Pierre Gauthier, and Jonathan Wilde).

Without hearing extensive submissions, I granted the applications for party standing of Mr. Mulroney, Mr. Schreiber, Mr. Doucet, and the Attorney General of Canada at the hearing. I denied the applications for standing and funding of Mr. Cherrier and Mr. Gauthier because I was of the view that I did not have jurisdiction to deal with the issues they raised. I also denied the application of Mr. Wilde. In reasons issued after the hearing, I denied the Bloc Québécois' application for intervenor status. Again with reasons issued after the hearing, I granted Mr. Doucet funding for Part I. Copies of my reasons in respect of these last two applications are included as Appendix 9.

MOTIONS FOR STANDING AND FUNDING IN PART II – POLICY REVIEW

I heard motions for standing in the Policy Review on January 21, 2009. Applications for standing were received from Mr. Schreiber, the Attorney General of Canada, and Democracy Watch. An application for standing and funding was received from Arthur Jefford and Jefford Industries.

In reasons issued after the hearing, I granted the applications for standing of Mr. Schreiber, the Attorney General of Canada, and Democracy Watch. I denied the application of Mr. Jefford and Jefford Industries. Copies of my reasons in each of these four applications are included as Appendix 10.

Investigation

DOCUMENT PRODUCTION

Government of Canada Documents

Early in the Commission's process, Commission counsel sent a formal request for production of relevant documents to the Attorney General of Canada, who represented the Government of Canada and its constituent departments.

In response, documents gathered by the relevant government departments were sent to the Attorney General of Canada. The Department of Justice converted every document into Ringtail format and assigned each document a unique Ringtail identification number. The Department of Justice also catalogued and labelled the documents with basic identifying information, such as document date, document

type, and a description of the document. As noted earlier, there were rather lengthy but unavoidable delays in cataloguing and converting thousands of documents gathered from the various government departments into the Ringtail format. Although this conversion process was initiated in early August 2008, it extended over a number of months because of the volume of documents and the complex technological issues that arose.

Once converted to Ringtail and catalogued, these thousands of documents were reviewed by Commission counsel. Commission counsel and counsel for the Attorney General spent many hours working on document production issues in an attempt to facilitate the Commission's receipt of all documents having a scintilla of relevance to the Commission's mandate. Commission counsel knew that not all these documents would actually be relevant to the mandate. A key step would be determining which documents were relevant and ultimately making these documents available to the parties, while allowing counsel for the Attorney General of Canada the opportunity to make their own review to determine whether documents or parts of documents were subject to a claim of privilege. All this had to be accomplished within a very short period of time.

Ordinarily, the Attorney General of Canada will not release documents to non-government parties until each document has been reviewed by a Department of Justice lawyer to determine whether solicitor-client privilege, litigation privilege, or any of the privileges set out in sections 37 through 39 of the *Canada Evidence Act* should be asserted by the Government of Canada. As noted above, thousands of documents were gathered by various government departments and sent to the Attorney General of Canada. At the height of document collection and release, eight lawyers from the Department of Justice were cataloguing and reviewing documents. However, despite the size of the team of Department of Justice lawyers working on document review, had they carried out the privilege review before release of the documents to the Commission, the Commission's receipt and review of the government's documents would have been significantly delayed.

In an attempt to avoid such delays, the Attorney General of Canada suggested a protocol whereby all Government of Canada documents (except those protected by cabinet privilege) would be released to the Commission without a waiver of privilege by the Government of Canada. This meant that government documents could be received by Commission counsel without waiting for the privilege review to be carried out by Department of Justice lawyers.

A copy of the protocol is found at Appendix 11. With the protocol in place, Commission counsel were able to receive documents more quickly. On receiving these documents, Commission counsel reviewed them to determine which were relevant to the issues in the Commission's mandate. Once they had completed their review, Commission counsel then made a formal request for production of the relevant

documents. Counsel for the Attorney General of Canada reviewed the requested documents to determine whether any were subject to a claim of privilege. If such a claim were asserted, counsel for the Attorney General of Canada redacted the document accordingly. Because the documents requested for production constituted a significantly smaller subset of the entire Ringtail database, significantly fewer documents were subject to a privilege review by Department of Justice lawyers. CDs containing the redacted documents ready for release to the parties were provided to Commission counsel on a continuing basis, together with explanations of the reason or reasons for each assertion of privilege. Commission counsel would then review each assertion of privilege and, where warranted, challenge the assertion. The process provided for in the protocol allowed Commission counsel or counsel for the Attorney General of Canada to apply to the Commissioner for a ruling on whether a document was privileged or contained privileged information.

In the end, counsel for the Commission and the Attorney General of Canada consensually resolved all issues of privilege so that no applications were brought before me as Commissioner. The CDs were copied and provided to the parties to the Factual Inquiry. The documents on the CDs were produced in PDF format, because the parties did not have Ringtail capability.

I extend my thanks to Paul Vickery and his co-counsel for the Attorney General of Canada for their co-operation and professionalism in facilitating the timely delivery of documents to the Commission.

Cabinet Confidences

Under section 39 of the *Canada Evidence Act*, a minister of the Crown or the clerk of the privy council can object to the disclosure of documents by certifying in writing that the information constitutes a confidence of the Queen's Privy Council.

On December 18, 2008, Commission counsel wrote to counsel for Mr. Mulroney, asking Mr. Mulroney to consent to disclosure of any documents in the Government of Canada's possession that could be relevant to the Commission's mandate but that were otherwise protected by cabinet confidence. The Attorney General of Canada and the Privy Council Office identified 142 such documents that fell within Mr. Mulroney's time as prime minister. Mr. Mulroney consented to disclosure of all those documents, and I thank him for that. A copy of Order in Council PC 2009-534, which allows the documents to be released to the Commission and any individual to testify in respect of the documents for purposes of the Commission, is included as Appendix 12.

Documents received from the Privy Council Office were distributed to the parties along with other Government of Canada documents relevant to the Commission's mandate.

Documents from Other Persons

The *Inquiries Act*, section 4, gives a commissioner the power to summons persons to give evidence, orally or in writing, on oath or affirmation, and to produce such documents and things as the commissioner deems essential to investigate fully the matters to be examined.

The Commission issued subpoenas to parties, witnesses, and others. In most cases, the subpoenas compelled the individual to produce documents relevant to the proceedings. Careful consideration was given to whether a subpoena should be issued and to the scope of the documents sought.

When documents were received from parties other than the Attorney General of Canada, they were scanned and put into Ringtail format. Electronic copies of the documents in PDF format were copied to CD and provided to the parties to the Inquiry. Documents provided were subject to the confidentiality undertakings signed by the parties and their counsel. Each of these documents remained confidential until entered as an exhibit at the Factual Inquiry hearings. Documents that were not placed on the record remained confidential and parties were required to destroy them or return them to the Commission, in accordance with the terms of the confidentiality undertakings.

COMMISSION INVESTIGATOR

The Commission retained the services of an experienced investigator, Bill Blake, to locate potential witnesses and persons who might have information about the issues before the Commission. Mr. Blake, a former senior member of the Ottawa Police Service, had previously served as the investigator for Justice Denise Bellamy, who conducted a public inquiry into computer leases by the City of Toronto. In addition to locating witnesses and others with potentially relevant information, Mr. Blake reviewed documents, made suggestions regarding potential lines of inquiry that fell within the Commission's mandate, and interviewed possible witnesses. I thank Mr. Blake for all his efforts on behalf of this Commission.

FORENSIC ACCOUNTANTS

The Commission's Terms of Reference required that I investigate and report on the business and financial dealings between Mr. Schreiber and Mr. Mulroney, and on what payments, if any, were made by Mr. Schreiber to Mr. Mulroney; if any payments were made, when, how, and why they were made, as well as the source of funds for the payments made.

The Commission retained Navigant Consulting (Navigant), a firm of forensic accountants, to assist me in answering these questions. Navigant was asked to review, analyze, and trace funds into and out of various bank accounts relating to the activities

of Mr. Schreiber; more particularly, it was asked to trace the source of funds for the payments Mr. Schreiber allegedly made to Mr. Mulroney in 1993 and 1994, and to report its findings to the Commission.

The Navigant team, led by Steven Whitla, provided a valuable service to the Commission under difficult circumstances. Many, if not most, of the financial documents in the possession of the Government of Canada pertaining to Mr. Schreiber's finances were obtained by the government in response to letters of request sent by Canada in the mid-1990s to the governments of Switzerland and Germany during the course of investigations by the RCMP. The governments of Switzerland and Germany imposed strict constraints on the use the Government of Canada could make of documents provided at that time.

Commission counsel requested that the Government of Canada seek permission from the governments of Switzerland and Germany to enable the Commission to use the documents. The Government of Switzerland refused the Government of Canada's request. The Government of Germany agreed to review the documents requested but did not provide the Government of Canada with a waiver. As a result, neither Navigant nor the Commission was able to use or rely on documents received by the Government of Canada from Switzerland or Germany.

Mr. Whitla testified at the hearings, and the Navigant report was provided to the parties and entered as an exhibit in the Factual Inquiry. The Navigant team provided a tremendous service to this Commission, and I offer my sincere thanks to Mr. Whitla and his team.

WITNESS INTERVIEWS

The Commission's Rules of Procedure and Practice contemplated that Commission counsel could request an interview of any person who had information or documents that had any bearing on the subject matter of the Factual Inquiry. A person could be interviewed more than once. Interviews were voluntary, and persons who were interviewed were entitled, but not required, to have legal counsel present. No adverse inference was drawn as a result of any witness not being interviewed.

Before Commission counsel interviewed anyone as a potential witness, that person and his or her counsel were provided with a book of relevant documents. The potential witness was required to sign a confidentiality undertaking before being provided with the book of documents. Because many of the events that were under investigation occurred more than 15, or even 20, years earlier, the binders helped witnesses refresh their memories and were also useful as a precursor to the witness binders that would be produced for the hearing.

A potential witness could elect to have the interview transcribed or have a summary of his or her interview made. If the potential witness did not choose transcription, Commission counsel prepared the summary and the potential witness or his or her

counsel reviewed and either approved it or suggested revisions for consideration by Commission counsel. If the potential witness was ultimately called to testify, either the transcript or the summary, both being subject to the confidentiality undertaking, was provided by Commission counsel to the parties and their counsel. Under the Rules of Procedure and Practice, if a person was interviewed but not called as a witness, the parties would be informed of the interview but would not be provided with a transcript or summary.

The interviews were useful in assisting Commission counsel in understanding the events and documents relevant to matters under review before the actual hearings in the Factual Inquiry started. Most interviews took place before the hearings began, although some took place as hearings were under way.

NOTICES OF ALLEGED MISCONDUCT (SECTION 13 NOTICES)

Section 13 of the *Inquiries Act* stipulates: “No report shall be made against any person until reasonable notice has been given to the person of the charge of misconduct alleged against him and the person has been allowed full opportunity to be heard in person or by counsel.”

A number of section 13 notices were issued by the lead Commission counsel, Mr. Wolson. The preamble in the notices stated:

As you are aware, section 13 of the *Inquiries Act*, R.S. 1985, c. I-11 prevents the Commissioner from making a report against any person unless reasonable notice has been given of the charge of misconduct alleged against him. Pursuant to section 13 of the *Inquiries Act*, you are hereby informed that the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney **may** make a finding or findings of misconduct by you in its report. These potential findings, which are described in this section 13 notice, are open to be made on the evidence presented and may amount to misconduct. Please be aware that the Commissioner has not suggested that he is inclined to make these findings. I have identified these areas of concern, independently of him, to ensure that you will be in a position to give him full information and argument before he begins to deliberate, should you choose to do so. I can reaffirm that the Commissioner is aware that he is not to make findings of civil or criminal responsibility. Should you wish to respond to these potential misconduct findings by calling additional evidence, please notify me by 5 p.m. on Friday, May 29, 2009.

Be advised that this section 13 notice is being provided in confidence, i.e. the fact that this section 13 notice has been issued, and its contents, will be kept in confidence by the Commission. This is being done to protect your reputation from being harmed by the mere possibility that any of these findings could be made.

The list of particulars of the possible findings of misconduct followed the preamble. I did not draft the notices; however, I saw them before they were issued and served. Since I was the person responsible for writing the Report and making findings, I wanted to ensure that all persons against whom findings of misconduct might be made were given notice with the right to be heard in person or by counsel and that the notices reflected my own views. A sample notice is found at Appendix 13.

The Commission did not issue a section 13 notice based solely on a possible finding that a particular witness's evidence might be found to be not credible. I determined that misconduct should, and must, mean more than such a finding.

Before the Factual Inquiry hearings began, Commission counsel gave a great deal of consideration to when the appropriate time might be to issue section 13 notices. The Supreme Court of Canada noted in the *Krever* decision:

Although the notices should be given as soon as it is feasible, it is unreasonable to insist that the notice of misconduct must always be given early. There will be some inquiries, such as this one, where the Commissioner cannot know what the findings may be until the end or very late in the process. So long as adequate time is given to the recipients of the notices to allow them to call the evidence and make the submissions they deem necessary, the late delivery of notices will not constitute unfair procedure.

The timing of notices will always depend upon the circumstances. Where the evidence is extensive and complex, it may be impossible to give the notices before the end of the hearings. In other situations, where the issue is more straightforward, it may be possible to give notice of potential findings of misconduct early in the process.⁷

The underlying concern is fairness, ensuring that a recipient of a section 13 notice be given an opportunity to call evidence and make submissions to respond to the allegations in the notice. Commission counsel also discussed the timing of the notices with the potential recipients through counsel.

After much deliberation, it was decided to issue the notices after all witnesses had testified but before closing submissions were made. The advantage of waiting until this late in the Factual Inquiry process was that the notices could be drafted based on the testimony to that point, rather than in a vacuum. Recipients of the notices were informed in a covering letter that they could call further evidence if they so desired. Closing submissions were scheduled to be held after all evidence was called, providing an opportunity to the recipients of the notices to address any alleged misconduct in their submissions.

No recipient of a section 13 notice chose to call further evidence.

Institutional Reports

Under the Terms of Reference, I was to investigate and report on a number of matters involving the government and its policies.

The Terms of Reference contained two questions concerning correspondence sent by Mr. Schreiber to Prime Minister Stephen Harper. I was directed to investigate and report on the steps that were taken in processing Mr. Schreiber's correspondence to Prime Minister Harper of March 29, 2007, and why the correspondence was not passed on to the prime minister. I was directed to determine whether the PCO should have adopted any different procedures in this case.

I was also directed to investigate and report on whether there was "appropriate disclosure and reporting of the dealings and payments." It appeared that, to answer this question, the Commission would require information concerning the voluntary disclosure program of the Canada Revenue Agency (CRA) between 1993 and 2000.*

To assist the Commission in its investigation of these matters, my counsel wrote to the counsel for the Attorney General of Canada to request reports by the PCO and the Prime Minister's Office (PMO) on how mail for the prime minister is processed by the two offices, and the steps that were taken in processing Mr. Schreiber's mail addressed to Prime Minister Harper. Commission counsel also requested a report from the CRA on the operation of the voluntary disclosure program between 1993 and 2000.

These three reports provided Commission counsel with information that was very useful as they prepared for interviews of government witnesses. The reports were provided to the parties and were made exhibits at the Factual Inquiry hearings.

Extension of the Commission's Deadline

Under Order in Council PC 2008-1092 establishing the Commission of Inquiry, the Commission was directed to submit its report or reports, in both official languages, on or before June 12, 2009. In order to meet this challenging deadline, I had originally hoped to commence the Factual Inquiry on February 9, 2009. However, because of technological problems, already discussed, in relation to the disclosure of documents, and the numbers of documents to be reviewed on Ringtail, it was impossible for the Commission to begin that part of its work as planned. Following my hearing from counsel for the Commission and for the parties, I authorized a change in the date for commencement of the hearings in the Factual Inquiry to March 30, 2009.

As a consequence of this necessary change, the time between the commencement date of March 30 and the date on which the Commission was to complete its work, June 12, 2009, became impossibly short. I therefore sought from the government an

* The Commission uses here Canada Revenue Agency, the name under which agency representatives appeared at the hearings, even though its name changed multiple times in the relevant period. The Department of National Revenue became the Canada Customs and Revenue Agency (CCRA) in 1999 and the CRA in 2003.

extension of the deadline of the Inquiry. The extension I sought was granted, and the deadline for submission of the Commission's report or reports was extended to December 31, 2009.

Shortly after July 28, 2009, the date of the last hearing by the Commission, I assessed the situation and ascertained that the Commission had either generated or received approximately 150,000 pages of documents in the course of preparing for and conducting the hearings. Because of the mass of evidence to be reviewed by me, comprising some 5,000 pages of transcript from the hearings together with approximately 15,000 pages of documents that had been tendered as exhibits during the hearings, I reluctantly came to the conclusion that I could not possibly complete the task of writing my Report in time to submit it to the government by December 31, 2009. I was further convinced that I did not have sufficient time to write my Report and to submit it by that date by advice I received that the editing, translation, and printing of my Report would take approximately three months. This meant that I would have to make application to the government for a second extension of the Commission's mandate whereby the deadline for submitting my Report would be extended. I made the application for the extension, which was granted with the deadline for submitting my Report to the government being extended to May 31, 2010. Both the Order in Council of December 28, 2008, and that of November 5, 2009, are set out at Appendix 1.

Hearings on Standards of Conduct

The Terms of Reference required me to address certain standards of conduct as set out in paragraph (a), Questions 11, 12, and 13:

11. *Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?*
12. *Was there appropriate disclosure and reporting of the dealings and payments?*
13. *Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?*

Before answering Questions 11 and 12, I would be required to identify the norms and standards to be applied in interpreting whether the conduct under discussion was appropriate in the circumstances. Before answering Question 13, I would be required to determine what those ethical rules or guidelines were.

I thought it important that, before I heard the evidence in the Factual Inquiry, all parties granted standing, particularly Mr. Mulroney, know by what standard the appropriateness of Mr. Mulroney's business and financial dealings, as well as the disclosure and reporting of those dealings and payments, would be assessed.

Accordingly, the Commission issued a “Notice of Hearing on Standards of Conduct,” inviting the parties to make written and oral submissions on the applicable standards. A copy of the notice is attached at Appendix 6.

I issued my written ruling on standards (Standards Ruling) on February 25, 2009. Mr. Mulroney then brought a motion for clarification. After hearing submissions from the parties, I issued my written ruling on the clarification motion (Clarification Ruling) on April 1, 2009. The issues raised are discussed in Chapter 9, and copies of my Standards Ruling and Clarification Ruling are found at the end of that chapter as Appendices 9-1 and 9-2.

Factual Inquiry Hearings (Part I)

COMPELLING THE ATTENDANCE OF WITNESSES

As noted earlier, the *Inquiries Act* gives commissioners the power to summons persons to give evidence.

With the exception of current employees of the government who could be expected to attend at the behest of the Government of Canada, the Commission took a uniform approach and issued subpoenas to all witnesses called upon to testify at the Factual Inquiry. A sample subpoena is attached at Appendix 14. All those served had to declare that they had produced the documents requested. A sample declaration is attached at Appendix 15.

The Commission met with resistance from a small number of witnesses who were prepared, indeed felt it their public duty, to co-operate fully with the Commission. They felt the subpoena was unnecessary and, moreover, could have a negative impact on their reputations, as it would be inferred that they would not have co-operated or attended to testify without the issuance of a subpoena. Commission counsel assured these individuals that all witnesses were being issued subpoenas in order to avoid any such argument. I believe the uniform approach was a good one because it did not place the Commission in the position of having to decide which witnesses should, or should not, be issued a subpoena.

The Commission had no jurisdiction to compel witnesses from outside the country to attend. Former prime minister Kim Campbell, who lives outside the country, was highly co-operative and attended the Factual Inquiry hearing to give her evidence. The full list of witnesses who appeared before the Commission in the Factual Inquiry is provided at Appendix 16.

ORAL EVIDENCE

The Commission’s Rules of Procedure and Practice provided that Commission counsel would call and cross-examine witnesses. The Rules set out the order of examination; parties had an opportunity to cross-examine the witness after Commission counsel had done so. The Rules provided that the order of cross-examination of witnesses was to be determined

by the parties and, if they were not able to reach an agreement, by the Commissioner. In all cases, counsel were able to agree. After cross-examination by the parties, counsel for the witness could examine the witness and was entitled to ask both leading and non-leading questions. Commission counsel had the right to re-examine last.

Under the Rules, counsel for any party could apply to lead a particular witness's evidence-in-chief. Mr. Mulroney's counsel relied on this provision and applied to lead Mr. Mulroney's evidence, to which all the other parties consented. The application was granted, and Mr. Mulroney's counsel carried out the examination-in-chief of Mr. Mulroney. Mr. Mulroney was then cross-examined by Mr. Wolson, Commission counsel, followed by counsel for the other parties. Unlike witnesses who were examined first by counsel to the Commission, Guy Pratte, counsel for Mr. Mulroney, did not have a right to re-examine Mr. Mulroney.

ADOPTION INTO EVIDENCE OF WITNESS INTERVIEWS

In a number of instances, in the interests of efficiency, the transcript or summary of a witness interview was entered as an exhibit in the Factual Inquiry, with the consent of all parties, instead of calling the person to give oral evidence. This process was in keeping with recommendations made by Dr. David Johnston in his report to the prime minister and with the Rules of Procedure and Practice of the Commission. It proved to be an effective means of putting into evidence matters that were not controversial while reducing hearing time. I recommend the adoption of this process by future commissions of inquiry.

HEARING OF APPLICATION BY KARLHEINZ SCHREIBER

On May 11, 2009, during the course of the Factual Inquiry, Mr. Schreiber filed an application in which he sought an order, direction, or recommendation from me that he remain available in Ottawa for the balance of the Factual Inquiry and for the Policy Review. The documentation file on behalf of Mr. Schreiber made it clear that his application was made out of a concern that the minister of justice was going to surrender him to Germany pursuant to extradition proceedings that had taken place prior to the conclusion of the Factual Inquiry and the Policy Review.

On June 3, 2009, I heard submissions with respect to Mr. Schreiber's application from Richard Auger, counsel for Mr. Schreiber, and from Yannick Landry, counsel for the Attorney General of Canada.

That same day, I rendered my decision orally on the application, saying that, although I had no jurisdiction as Commissioner to make the order sought, I was recommending that the minister of justice not surrender Mr. Schreiber to Germany before the completion of the Commission's work because to do otherwise would be a travesty of justice. The ruling is attached at Appendix 17.

CLOSING SUBMISSIONS

In keeping with my earlier comments on the role of Commission counsel as my alter ego, I felt it inappropriate to have my counsel argue before me and adopt an adversarial stance. Commission counsel were, therefore, instructed by me not to make closing submissions. The parties, except for the Attorney General of Canada (who chose not to make a submission), made their closing submissions on June 10, 2009. The order of presentation, as agreed on by counsel, had counsel for Mr. Schreiber going first, followed by counsel for Mr. Doucet, with counsel for Mr. Mulroney last.

Policy Review (Part II)

In the Policy Review, I was charged with reporting and making recommendations on two issues of policy. They centred, first, on the content of Canada's federal ethics rules and, second, on the policies and practices at the PCO governing the handling of the prime minister's correspondence.

PUBLIC CONSULTATIONS

For the public consultation on the ethics issues, the Commission's research director, Professor Forcese, drafted a public consultation paper that provided an overview of the current ethics legislation and the issues before the Commissioner. The Commission published the Public Consultation Paper on its website and sought submissions on the policy questions from interested persons and the public. The Public Consultation Paper is found at Appendix 18. As originally planned, I intended to hear from those who had filed written submissions. Regrettably, the Commission received only one substantive submission in response. Therefore, I decided not to hold any public consultations.

EXPERT POLICY FORUM

As part of its policy deliberations, the Commission planned a multi-stage policy review consisting of consultation with experts and the public.

For the expert review, the Commission retained leading researchers in the field – Dr. Lori Turnbull, Department of Political Science, Dalhousie University; Dr. Gregory J. Levine, barrister and solicitor, London, Ontario; and Dr. Paul G. Thomas, Duff Roblin Professor of Government, St. John's College, University of Manitoba. The first two were asked to produce studies on ethics rules, and the third examined correspondence-handling policies. In March 2009 these independent studies were published in draft form on the Commission's website and given to the parties granted standing for Part II. Submissions on the draft studies were sought from the parties and the public.

An expert policy forum, consisting of a series of round-table panel discussions, was held in mid June 2009. The policy round-table participants and issues are listed in Appendices 19 and 20. The three Commission experts, Dr. Turnbull, Dr. Levine, and Dr. Thomas, constituted the first panel. That panel, as well as all subsequent panels, was chaired by a Commission counsel, who questioned each panellist.

A second panel of academic experts comprised Professors Kathleen Clark of Washington University in St. Louis, Missouri, Ian Greene of York University, and Lorne Sossin of University of Toronto, as well as Duff Conacher representing Democracy Watch. Both expert panels were invited to discuss the policy questions arising from the Commission's Terms of Reference.

A third panel, consisting of federal and provincial ethics and lobbying commissioners, presented an overview of their respective mandates and legislation and answered questions relevant to the issues before the Commission. The panel included Mary Dawson, federal conflict of interest and ethics commissioner; Paul D.K. Fraser, conflict of interest commissioner, British Columbia; Lynn Morrison, then acting integrity commissioner,⁸ Ontario; and Karen E. Shepherd, then the interim federal commissioner of lobbying.⁹

The fourth panel in the expert policy forum comprised a number of senior political and public service officials: former prime minister the Right Honourable Joe Clark, PC; Mel Cappe, president, Institute for Research on Public Policy; Penny Collenette, University of Ottawa; and David Mitchell, president, Public Policy Forum. The Commission elicited their insights into the social, economic, political, and cultural environments surrounding the transition from public office and the rules governing employment after leaving public office.

At the end of July 2009, the Commission also heard from Sue Gray, head, propriety and ethics team, UK Cabinet Office. Ms. Gray discussed certain aspects of the ethics regime in the United Kingdom. At the same time, Mary Dawson, federal conflict of interest and ethics commissioner, returned to provide the Commission with information about education relevant to the issues for which her office is responsible.

Following the expert policy forum, the three Commission experts produced final versions of their independent studies, which were filed with the Commission and are published as a companion volume to this Report.

The five round-table discussions during the expert policy forum were balanced, thoughtful, and informative. All the participants generously gave their time and experience to assist the Commission in its work, and for this I am grateful.

I must thank Professor Forcese for his tireless efforts on behalf of the Commission. He was instrumental in ensuring that the policy issues were discussed from various perspectives, which was very valuable to me when I approached the policy questions raised in the Commission's Terms of Reference.

Concluding Observations

I must admit that I was naive in my expectations about the size of the staff that would be needed by the Commission. Initially, I thought the administrative aspects of the Commission could be run with a director of administration and three or four support people. I was wrong. The size of federal commissions of inquiry – together with the number of security, technological, and documentary requirements, plus staffing, and contractual and budgetary matters – all required appropriate administrative support if the Commission was going to be able to carry out its task.

I have acknowledged a number of individuals throughout this Report, but I would be remiss if I did not comment on counsel for the parties. But for the two extensions (having regard to document-production issues and the mass of evidence to be reviewed and considered, respectively) sought and granted by the Governor in Council, this Commission commenced its hearings, completed those hearings, and allowed for the preparation of this Report all within the allotted time frame. I am proud of my counsel and staff for their efforts in that regard, but the task could not have been accomplished without the co-operation, skill, and professionalism of counsel who appeared before me on behalf of the parties and witnesses and who made my task much easier than it might otherwise have been.

I extend my thanks to all counsel for their efforts and assistance throughout the hearings. Counsel representing the Attorney General of Canada were led by Paul Vickery. Those representing Mr. Mulroney were led by Guy Pratte and Harvey Yarosky. Richard Auger led the counsel representing Karlheinz Schreiber. Robert E. Houston represented Fred Doucet. A complete list of counsel for the Commission, the parties, and the witnesses is set out at Appendix 21.

I was very pleased that the Commission completed its work in a timely manner. This result can be attributed to the hard work by Commission counsel, counsel for the parties, and the Commission's administrative staff. In order to make the best use of the time available during the course of the hearings, I made every attempt to commence the day's hearing promptly and to limit the breaks each morning and afternoon to 15 minutes. Also, where necessary and with the co-operation of all counsel, the Commission often worked long days. All these efforts helped the Commission to realize the objective of completing its work in such a timely manner.

NOTES

- 1 *Inquiries Act*, RS 1985, c. I-11, s. 2.
- 2 Ontario, *Report of the Walkerton Inquiry: Part One, The Events of May 2000 and Related Issues* (Toronto: Ministry of the Attorney General, 2002) (Commissioner Dennis R. O'Connor), 472.
- 3 *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97 at para. 62.
- 4 *Ibid.*, at para. 175.
- 5 *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440 at para. 57.
- 6 Justice Dennis O'Connor, "The Role of Commission Counsel in a Public Inquiry" (summer 2003) 22(1) *Advocates' Soc. J.* 9–11.
- 7 *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440 at paras. 69–70.
- 8 Ms. Morrison was appointed integrity commissioner on April 13, 2009.
- 9 Ms. Shepherd was appointed federal commissioner of lobbying on June 30, 2009.

The Commission's Mandate

In Chapter 2 of this Report, I discuss in a general way the nature of public inquiries in Canada. I now turn to examining, in a more specific manner, the mandate of this Commission.

Section 2 of the *Inquiries Act* states:

The Governor in Council may, whenever the Governor in Council deems it expedient, cause inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof.

The Governor in Council set out the Terms of Reference of this Commission in Order in Council PC 2008-1092. The Terms of Reference, which define the mandate for this Commission of Inquiry, can be found at Appendix 1 of this Report. The interpretation of the parameters of the mandate was a matter on which I felt comment was warranted. Accordingly, I set forth my interpretation of those parameters at the first hearing of this Commission, on October 2, 2008. At that time I indicated my view that the mandate of this Inquiry was to focus on the business and financial dealings of Brian Mulroney and Karlheinz Schreiber in relation to the Bear Head Project and the cash payments made by Mr. Schreiber to Mr. Mulroney in 1993 and 1994. My statement is set out at Appendix 7.

In his recently published text, *The Conduct of Public Inquiries: Law, Policy, and Practice*,¹ Professor Ed Ratushny discusses the importance of the terms of reference of a commission, which form its mandate. Here is what he has to say at page 130:

The terms of reference are crucial because the mere appointment of a commissioner tells us little. The entire life of a commission is dictated by its terms of reference, which are legally binding. They establish the jurisdiction of the commission. The boundaries of that jurisdiction dictate what the commission must do and what it cannot do. And they are legally enforceable by the courts.

The Federal Court of Appeal made it clear in *Dixon v. Canada (Governor in Council)*² that an inquiry is an agency of the executive branch of government and, as such, must operate within the parameters established by the Governor in Council. That means that, as Commissioner of this Inquiry, my jurisdiction is confined to responding to those questions and directions set forth in the Terms of Reference contained in Order in Council PC 2008-1092.

Background to the Inquiry

In September 1995 the Government of Canada forwarded a letter of request (LOR) to the Competent Legal Authority of Switzerland seeking assistance in the gathering of evidence pertaining to an investigation of the Right Honourable Brian Mulroney and Frank Moores.³ Mr. Moores had been the premier of Newfoundland; after leaving that office, he became a principal member of the lobbying firm Government Consultants International (GCI). The investigation was in relation to three government contracts where, it was alleged, improper commissions were paid to Mr. Schreiber (or companies controlled by him), with portions set aside for Mr. Moores and Mr. Mulroney. The contracts involved the purchase of numerous aircraft by Air Canada from Airbus Industrie; the purchase of helicopters by the Canadian Coast Guard from Messerschmitt-Bolkow-Blohm GmbH (MBB); and the proposed Bear Head contract involving Thyssen Industrie.⁴ The LOR and its contents were to be kept confidential. However, they were not. The LOR was leaked to the media.

Subsequent to that leak, several news agencies published articles on the alleged scandal. They continued to do so while the matter was under investigation. The RCMP conducted a lengthy and extensive investigation that spanned a period of more than eight years.⁵ Charges of fraud were laid in relation to the MBB contract, but no charges were ever brought against Messrs. Schreiber, Moores, or Mulroney.⁶

Following the initial media reporting of the LOR, Mr. Mulroney sued the Government of Canada for damages arising from injury to his reputation.⁷ In connection with the lawsuit he had commenced, Mr. Mulroney was questioned under oath on April 17 and 19, 1996, on an examination before plea held in public at the Montreal courthouse.⁸ On January 5, 1997, the litigation between Mr. Mulroney and the Government of Canada was settled by way of a public apology by the Government of Canada to Mr. Mulroney, as well as payment by the Government of Canada to him in the sum of \$2.1 million to cover his legal costs.⁹ There was extensive coverage

by the media of the litigation, Mr. Mulroney's testimony, and the settlement. The announcement by the RCMP in 2003 that its investigation was concluding without further charges¹⁰ was also the subject of wide media coverage.

In March 2007 Mr. Schreiber filed a lawsuit against Mr. Mulroney. In that suit, Mr. Schreiber sought repayment of \$300,000 plus interest from Mr. Mulroney for which it was alleged no services had been performed.¹¹

On November 7, 2007, Mr. Schreiber swore an affidavit in his lawsuit against Mr. Mulroney in which he made specific allegations pertaining to Mr. Mulroney, including allegations that, on three separate occasions, he (Mr. Schreiber) had paid \$100,000 cash to Mr. Mulroney.¹² Needless to say, the media coverage continued.

On November 22, 2007, the House of Commons Standing Committee on Access to Information, Privacy and Ethics (Ethics Committee) announced that it would hold hearings and call evidence pertaining to the relationship and dealings between Mr. Schreiber and Mr. Mulroney.¹³ Both men testified, as did a number of other individuals, including Fred Doucet, a long-time confidant of Mr. Mulroney's.

Johnston Reports

Prior to formalizing this Inquiry, the Governor in Council, by two earlier orders in council,¹⁴ appointed Dr. David Johnston, president and vice-chancellor of the University of Waterloo, as independent adviser to the prime minister to review certain allegations made about the financial dealings between Mr. Mulroney and Mr. Schreiber. Dr. Johnston was also to report to the prime minister on an appropriate mandate for an inquiry into those allegations. He submitted two reports. Following his initial appointment, but prior to the issuing of his report on January 9, 2008 (*First Report*), the Ethics Committee announced that hearings would be held regarding the Mulroney-Schreiber relationship, including the cash payments.

In his *First Report*,¹⁵ Dr. Johnston observed that, after an investigation of the Airbus, MBB, and Bear Head deals – an investigation in excess of eight years' duration – the RCMP determined that no charges beyond those laid in the MBB Helicopter (also known as Eurocopter) prosecution were warranted. Following a preliminary inquiry in the Eurocopter prosecution, it was determined that there was no evidence of secret commission payments being made to government officials. Consequently, the accused were discharged. The Crown brought an application for review of that decision to the Ontario Superior Court. That application was dismissed.

Dr. Johnston went on to discuss what issues of public concern should form the basis of any inquiry. He stated at pages 18–19 of his *First Report*:

Despite the closure of the RCMP file, there remain public concerns expressed in the media, in Parliament and by Canadians concerning Mr. Mulroney's receipt of cash from Mr. Schreiber, and the appropriateness of their dealings. Was there an agreement

between them? What was the agreement? Why was it entered into? When was it entered into? Was it appropriate? Prior to the Ethics Committee hearings, there had been insufficient disclosure of the facts surrounding these payments to allay public concern about their integrity and propriety. Prior to Mr. Mulroney's testimony, the former prime minister had provided no clear explanation of their nature and details. Numerous details have yet to be explored, and the Ethics Committee chair has indicated that Mr. Mulroney may be asked to return for further questioning.

The issue I have struggled with is whether and to what extent a public inquiry exploring these further details would be in the public interest, keeping in mind the purpose and constraints on such inquiries. The answer depends on what public interest is legitimately engaged by the exploration of these events. *In my view, the public interest issue is the integrity of Government and whether there was a breach of constraints; and if not, whether there is a need for further constraints on former high office holders after they leave office.* [Emphasis added.]

Dr. Johnston proceeded to suggest placing a limit on the manner in which such an inquiry, as contemplated by him, should be conducted. He stated at pages 22–23 of his *First Report*:

In determining the scope of any public inquiry, the Government must make a “cost benefit analysis” to determine how wide-ranging the public inquiry should be. In this case, I conclude that the integrity concerns described above do not warrant a lengthy inquiry into matters that have been investigated by the RCMP since 1995. Nor should there be an inquiry with respect to facts already known. Focused questions and a strong Commissioner who can maintain that focus are essential if this inquiry is to avoid becoming an excessive and expensive exploration of ground already covered, which will not answer the legitimate concerns the public has about whether these dealings were ethical.

In my view, Dr. Johnston clearly articulated what he envisioned as being the appropriate parameters of the proposed inquiry and what he hoped the proposed inquiry would not become. He then set out the 17 questions that he determined needed to be answered by the proposed public inquiry.

When Dr. Johnston issued his *First Report*, the Ethics Committee had not yet heard from all its witnesses. Dr. Johnston was given his second mandate on March 19, 2008, to determine whether he had any further recommendations, based on a review of any relevant additional information, including that garnered by the Ethics Committee's hearings. On April 4, 2008, he issued a *Second Report*, in which he stated at page 16:

I have considered whether, in light of the additional information that I reviewed, the questions that I set out in my first report are adequate to address these matters of legitimate public interest, or whether there are further questions that an inquiry might pursue. In my view the 17 questions that I listed remain the relevant questions for an inquiry into matters of legitimate public interest to answer.

Dr. Johnston recommended a focused inquiry, but one that could incorporate evidence already gathered by other bodies.¹⁶ By letter dated March 6, 2009, this Commission requested permission from the Parliamentary Counsel Office to use the transcripts of the Ethics Committee hearings. To my regret, the request was denied on March 12, 2009, on the basis of parliamentary privilege. This exchange is attached at Appendix 22.

Interpretation of the Mandate

In this chapter, I have referred extensively to the views of Dr. Johnston. That is because they played an integral role in the formulation of this Inquiry's Terms of Reference and, as such, its mandate. The 17 questions that form the heart of the Terms of Reference are identical to the 17 questions listed by Dr. Johnston in his *First Report*.

To ensure that I have properly interpreted this Commission's mandate, I have considered and applied the modern principle of statutory interpretation. Accordingly, it may be helpful to the reader for me to explain that principle and how it is employed.

The preferred approach to statutory interpretation was set out by the Supreme Court of Canada in *Re Rizzo & Rizzo Shoes Ltd.* as follows:¹⁷

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament [as quoted from Elmer Dreidger in *Construction of Statutes* (2nd ed. 1983), p. 87].

Pursuant to section 2 of the *Interpretation Act*,¹⁸ an order in council is considered to be a regulation. The Supreme Court of Canada stated, in *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, that the "scope of the regulation is constrained by its enabling legislation."¹⁹

Section 12 of the *Interpretation Act* provides that "[e]very enactment is deemed remedial" and directs that every act "shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects." Section 13 of the Act directs that "[t]he preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object."

The modern principle of statutory interpretation directs not only that one look at the words used, with their ordinary meaning attached, but also that the words must be viewed within their entire context. The preamble to a statutory enactment may be relied on to reveal the purpose of an enactment.²⁰ As noted by Ruth Sullivan in *Sullivan and Driedger on the Construction of Statutes*, "[i]n keeping with the modern emphasis on purposive analysis, heavy reliance on the preamble is often judged appropriate."²¹ When interpreting this Commission's Terms of Reference in accordance with the *Interpretation Act* and the modern approach to statutory interpretation, I must consider the preamble in order to view them within their entire context.

I reproduce the preamble to the Terms of Reference here:

Whereas Karlheinz Schreiber has made various allegations with respect to his business and financial dealings with the Right Honourable Brian Mulroney, P.C., including those made in an affidavit sworn on November 7, 2007 and those made with respect to an agreement allegedly reached on June 23, 1993;

Whereas certain of the allegations with respect to the Right Honourable Brian Mulroney's tenure as Prime Minister, although unproven, go beyond the private interests of the parties, and raise questions respecting the integrity of an important office of the Government of Canada;

Whereas, by Orders in Council P.C. 2007-1719 of November 14, 2007 and P.C. 2008-600 of March 19, 2008, David Johnston of St. Clements, Ontario, was appointed as Independent Adviser to the Prime Minister, to conduct an independent review of the allegations respecting financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C.;

Whereas on January 9, 2008 and April 4, 2008, David Johnston submitted a first and second Report of the Independent Advisor into the Allegations Respecting Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney on the appropriate mandate for a public inquiry into those allegations;

Whereas David Johnston concluded that "any public inquiry should be a focused inquiry into specific matters of legitimate public interest", and, in his view, "the issue of public concern in this matter remains compliance with the constraints on holders of high public office and the adequacy of the current constraints";

Whereas David Johnston concluded that certain of the allegations have already been the subject of prior examination or investigation;

And whereas David Johnston concluded that the questions set out in his report of January 9, 2008 are relevant questions for a commission of inquiry;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby directs that a Commission do issue under Part I of the Inquiries Act and under the Great Seal of Canada appointing the Honourable Jeffrey J. Oliphant as Commissioner to conduct an inquiry into certain allegations respecting business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C., (the "Inquiry"), which Commission shall:

- (a) direct the Commissioner to investigate and report on the following questions relating to the business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C.

When the 17 questions that follow the preamble are viewed through this contextual lens, there can be no doubt, in my view, that the mandate of this Commission of Inquiry was to be a focused inquiry into the business and financial dealings of Mr. Mulroney and Mr. Schreiber in relation to the Bear Head Project

and the payments made by Mr. Schreiber to Mr. Mulroney in 1993 and 1994. I publicly proclaimed this to be my view of the mandate on October 2, 2008, at the commencement of the standing hearings for the factual phase of this Inquiry. Following that pronouncement, I heard applications as to standing and applied the mandate of this Inquiry as the guide to determine which individuals or entities were entitled to standing at this Inquiry.

As noted in Chapter 2, The Inquiry Process, on this basis I granted standing in the Factual Inquiry to Mr. Mulroney, Mr. Schreiber, Fred Doucet, and the Attorney General of Canada.

NOTES

- 1 Ed Ratushny, *The Conduct of Public Inquiries: Law, Policy, and Practice* (Toronto: Irwin Law, 2009).
- 2 *Dixon v. Canada (Governor in Council)*, [1997] 3 FC 169.
- 3 Exhibit P-7(2), tab 116.
- 4 *Ibid.*
- 5 Canada, *Report of the Independent Advisor into the Allegations Respecting Financial Dealings Between Mr. Karlheinz Schreiber and the Right Honourable Brian Mulroney* (Ottawa: Minister of Public Works and Government Services, 2008), 9, available online at <http://www.pco-bcp.gc.ca/docs/information/publications/ria-rci/complete-complet-eng.pdf> [hereinafter, Johnston, *First Report*].
- 6 Johnston, *First Report*, 9.
- 7 Exhibit P-26; Exhibit P-26A. Johnston, *First Report*, 10.
- 8 Exhibit P-48.
- 9 Exhibit P-44, tab 81.
- 10 Johnston, *First Report*, 9.
- 11 Exhibit P-7(3), tab 17.
- 12 Exhibit P-7(3), tab 21.
- 13 Canada, *Second Report of the Independent Advisor into the Allegations Respecting Financial Dealings Between Mr. Karlheinz Schreiber and the Right Honourable Brian Mulroney* (Ottawa: Minister of Public Works and Government Services, 2008), 1–2, available online at <http://www.pco-bcp.gc.ca/docs/information/publications/jr-rj/report-rapport-eng.pdf> [hereinafter, Johnston, *Second Report*].
- 14 Order in Council PC 2007-1917, dated November 14, 2007, and Order in Council PC 2008-600, dated March 19, 2008.
- 15 Johnston, *First Report*.
- 16 Johnston, *Second Report*, 17.
- 17 *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 SCR 27 at para. 21.
- 18 *Interpretation Act*, RSC, 1985, c. I-21, s. 2.
- 19 *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, [2005] 1 SCR 533, para. 38.
- 20 Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes* (4th ed., Markham, Ont.: Butterworths Canada, 2002), 296.
- 21 *Ibid.*, 299–300.



History of the Bear Head Project

By the terms of my mandate, the government has asked me to inquire into and report on certain allegations respecting the business and financial dealings between Mr. Karlheinz Schreiber and the Right Honourable Brian Mulroney.

In his second report,¹ Dr. David Johnston observed that the status of what has come to be known as the Bear Head Project could, at potentially relevant times, be considered uncertain. He expressed the view that the uncertainties about the project might be of importance to the commissioner of any public inquiry during his or her work. I agree with Dr. Johnston's assessment. Acting on this sentiment, Commission counsel called evidence on the Bear Head Project in order to probe those uncertainties and consider the link, if any, between the Bear Head Project and the business and financial dealings of Mr. Schreiber and Mr. Mulroney. In my view, in order to understand, as I must, what is behind the allegations concerning the Bear Head Project and to put them in context, a detailed review of the history of the project is essential. In this chapter, I attempt to set out this history in a straightforward manner. It will be useful when I analyze the business and financial dealings between Mr. Schreiber and Mr. Mulroney in later chapters of this Report.

The Bear Head Project can be viewed as a series of four proposals made to the Canadian government by Thyssen Industrie AG (Thyssen) of Germany through its Canadian subsidiary Bear Head Industries Limited (Bear Head Industries) and its chairman, Mr. Schreiber. In 1985 Bear Head Industries submitted its first proposal to the Progressive Conservative government led by Mr. Mulroney: to establish an export-

oriented, heavy-duty manufacturing plant in Cape Breton, Nova Scotia. Work at the plant would focus on the manufacture of military vehicles. In the three subsequent proposals submitted by Bear Head Industries, military vehicles were again an essential component of production. Each proposal required some form of assistance from the Canadian government – some combination of grants, loans, tax credits, free land, and guaranteed sales. The final proposal, initially formulated in 1992 while the Mulroney government was still in power, sought to establish a research and development facility for light armoured vehicles and, subsequently, a manufacturing facility in the east end of Montreal. This proposal was pursued until the late summer of 1995, when the Liberal government of Prime Minister Jean Chrétien finally terminated all consideration of the project. Bear Head Industries was later dissolved, bringing this 10-year saga to an end.

What was most remarkable about the Bear Head Project was that, even as each proposal was rejected by the bureaucrats and politicians, it came back in another form to be reconsidered. Throughout the decade, Mr. Schreiber was a tireless promoter of the project, endeavouring to push all four proposals to acceptance. He used his relationships with Elmer MacKay, the member of parliament for Central Nova who held various ministerial portfolios throughout Mr. Mulroney's government, and Fred Doucet, a close friend and former senior adviser of Mr. Mulroney, to gain access to government officials, including Mr. Mulroney himself. In Chapter 5, I scrutinize the relationship between Mr. Mulroney and Mr. Schreiber, including the years when the Bear Head Project was being promoted in its various guises. In this chapter, however, I set out the broad outlines of the Bear Head Project as it morphed from one proposal to another. (For a chronology, see Table 4-1 at the end of this chapter.)

First Bear Head Proposal

INITIAL CONTACT BETWEEN THE CANADIAN GOVERNMENT AND THYSSSEN, 1985

In the mid-1980s Thyssen demonstrated an interest in investing in the Cape Breton area. At the time, the Canadian government had adopted a plan to try to revitalize the economy, and a group of officials who were involved in this effort made the initial contact with the company.² Cape Breton was regarded as a particularly depressed area, and, in its May 1985 budget, the federal government committed to both “an activist investment promotion program” there and “a special tax credit and other incentives.”³ In a memorandum to cabinet dated January 30, 1986, Joe Clark, the secretary of state for external affairs, summarized these developments well: “Over the past year,” he wrote, “the Minister of Regional Industrial Expansion undertook a major investment promotion programme in Western Europe. As a result he succeeded in interesting Thyssen in establishing an armoured car and tank manufacturing facility in Canada.”⁴

Thyssen submitted a proposal to the Canadian government on July 10, 1985, regarding its investment interests in the Cape Breton area.⁵ The initial Thyssen proposal contemplated two phases.⁶ First, the company would establish a manufacturing facility at Bear Head on the Strait of Canso for the production and export of wheeled and tracked vehicles for both military and civilian use.⁷ The Middle East was the immediate target market for the exports, but the company planned subsequently to sell its products to other countries, including the United States.⁸ Second, the company would expand into complementary non-military items, such as equipment for offshore exploration and drilling. Thyssen estimated that it would create 450 direct jobs in Cape Breton in phase one, and 2,000 such jobs in phase two.

On July 10, 1985, Winfried Haastert, a member of Thyssen's board of directors, wrote to Sinclair Stevens, the minister of regional industrial expansion (DRIE),* that the key factor in the Bear Head Project was "the necessary export approvals for Thyssen's defence products to specified countries."⁹ At the time, as "a result of the legacy of Germany's role and policies in World War II,"¹⁰ the German government prohibited Thyssen from selling military vehicles to many countries outside NATO – in particular, Middle Eastern countries. Thyssen ultimately asked the Canadian government to grant the company five-year export permits for Canadian-produced armoured military vehicles, including tanks, to "Saudi Arabia, Kuwait, the United Arab Emirates, Bahrain, Pakistan and Algeria."¹¹

PRIVY COUNCIL OFFICE PERSPECTIVE

Within the administrative structure of the Canadian federal government, the Privy Council Office (PCO) is the prime minister's department. It provides policy advice to both the prime minister and the cabinet. As Paul Tellier, clerk of the privy council and secretary to the cabinet from August 12, 1985, to June 30, 1992, explained during his testimony, the PCO "is there to provide policy advice as opposed to political advice to the Prime Minister."¹² By definition, he said, his position included three roles: deputy minister to the prime minister; head of the public service; and, as previously mentioned, cabinet secretary. As the most senior non-political official in the government of Canada for most of the time Mr. Mulroney was prime minister, Mr. Tellier gained a broad and deep perspective on the Bear Head Project – from the first Bear Head proposal in 1985 right through to 1992, when the final proposal was put forward. Given his position throughout this period, his knowledge of government, and his clarity of recall about many of the matters involving Bear Head, Mr. Tellier was a key, well-informed witness.

Commission counsel Giuseppe Battista questioned Mr. Tellier about a memorandum he forwarded to Mr. Mulroney on or about February 5, 1986. In that memorandum, Mr. Tellier advised Mr. Mulroney that, as part of the first Bear Head

* On February 23, 1990, the name of the Department of Regional Industrial Expansion was changed to the Department of Industry, Science and Technology. The department is now known as Industry Canada.

proposal, Thyssen was also seeking an investment by the Canadian government in the form of \$19 million in start-up infrastructure costs plus \$35 million in investment tax credits.¹³ Mr. Tellier also warned that the cabinet ministers would express a strong divergence of views on the proposal, particularly with regard to the economic benefits to be derived from the project and the potentially serious implications for Canada's foreign policy. The Bear Head proposal might even be perceived as an attempt by Thyssen to circumvent German foreign policy. He listed several other troubling points, including cost, the unlikelihood that Thyssen would be able to break into the American market, and the fact that Bear Head would be regarded as competition to General Motors Diesel Division (GMDD or DDGM) – a military vehicle manufacturer located in southwestern Ontario. In conclusion, Mr. Tellier recommended that the government not approve the Thyssen proposal.

In a subsequent memorandum sent to the prime minister on March 3, 1986, Mr. Tellier provided Mr. Mulroney with additional information about the foreign policy aspects of the proposal.¹⁴ None of the information outlined in that memorandum was favourable to the acceptance of Thyssen's proposal.

MR. SWAIN'S PERSPECTIVE

Harry Swain, who in March 1985 became the assistant secretary of the privy council and remained in that position until 1987, testified that the officials who supported the Bear Head proposal included cabinet ministers from eastern Canada, Sinclair Stevens (the chairman of the Cabinet Committee on Economic Development), and members of the Prime Minister's Office (PMO). He confirmed that this list included Elmer MacKay, who, on January 30, 1989, became the minister responsible for the Atlantic Canada Opportunities Agency (ACOA). In the course of his testimony, Mr. Swain made his personal views about Thyssen's proposal known to me: "The idea that the sales would depend on a non-existent Canadian military requirement," he said, "and sales to markets [Canada] had deliberately eschewed in the past on sound political grounds[,] rendered [the proposal] a nonstarter."¹⁵

MR. FOWLER'S PERSPECTIVE

In early 1986 Robert Fowler was the assistant secretary to the cabinet (foreign and defence policy) in the PCO. His February 5, 1986, memorandum for Mr. Tellier noted that the first Bear Head proposal was favoured by both Mr. Stevens and the prime minister, with the strong encouragement of Mr. Doucet and Mr. McMillan (who I presume was Charles McMillan of the PMO).¹⁶ Attached to this memorandum was a second memorandum that Mr. Fowler had drafted for Mr. Tellier. As set out on the letterhead, it was from the clerk of the privy council and secretary of the cabinet, and it was addressed to the prime minister. Before it could be forwarded, however,

it required Mr. Tellier's signature. Without going into detail, in this memorandum Mr. Fowler recommended against approval of the Thyssen proposal.

MR. MULRONEY'S PERSPECTIVE

Mr. Mulroney testified that he first heard of the Bear Head proposal in "'86-'87, early '87."¹⁷ As he understood the project at that time, Thyssen had expressed an interest in designing and building vehicles in Cape Breton for military and peacekeeping purposes. He also understood that Thyssen might be interested if there was provision, through a beneficial tax treatment, for assistance with building the infrastructure. Mr. Mulroney stated that, initially, he was favourably disposed to the Bear Head concept because of the employment opportunities it promised to bring to Cape Breton.

Mr. Mulroney testified that, when the Bear Head Project came before cabinet, however, it contained a new dimension that caused concern. Joe Clark, in his role as External Affairs, was perturbed by the fact that Thyssen was seeking to export military equipment to countries such as Saudi Arabia and Syria.¹⁸ Mr. Mulroney stated that this aspect of the proposal created a conflict between economic development and foreign policy.

Mr. Clark articulated his concerns in the memorandum he wrote to cabinet dated January 30, 1986. In it, he made it clear that External Affairs opposed the Bear Head Project:

The Thyssen project could seriously compromise our political relations with the Middle East and Africa. It could also undermine our long standing efforts to promote stability in these regions. It is likely to engender sustained negative reaction both domestically and abroad, particularly from Israel and its supporters within and without Canada. Grave doubts have also been raised as to the economic viability of this project beyond the short term. For all of these reasons, the proposed industrial benefits do not seem substantial enough, nor sufficiently certain to outweigh the negative political repercussions.¹⁹

According to Mr. Mulroney, he resolved the conflict by informing cabinet of the government's position:

We will not under any circumstances, ship any equipment to the Middle East that places Israel in a disadvantaged position. We will not do it. So you can stop talking about it and if this is the ultimate project, it is not going anywhere.²⁰

MR. SCHREIBER'S ROLE

While testifying before me, Mr. Schreiber confirmed that he became involved in the Bear Head proposal after meeting Winfried Haastert. This introduction must have occurred in 1985. Mr. Schreiber also confirmed that, in the course of their

conversation, Mr. Haastert explained that “Thyssen had been approached by the Government of Canada.”²¹

By the end of October 1985 Mr. Schreiber and Mr. Haastert had conducted negotiations pertaining to a consultancy agreement.²² Mr. Haastert wrote a letter to Mr. Schreiber on October 30, 1985,²³ in which he reviewed his understanding of the negotiations: that Thyssen contemplated entering into a contract with Bitucan Holdings Limited (Bitucan), a company controlled by Mr. Schreiber. Further, Mr. Haastert confirmed that \$30,000 would be transferred as a down payment to Bitucan. That sum constituted a monthly fee of \$6,000 for a five-month period and would be deducted from any eventual commissions.

Under the heading “Agreement with I.A.L. Liechtenstein,” Mr. Haastert wrote that, should Thyssen and the Nova Scotia government sign a contract for the construction of the Bear Head plant, a \$4 million one-time “refund” would be paid to International Aircraft Leasing Limited (IAL), provided that the provincial government fulfilled certain agreed conditions.²⁴ IAL was a company incorporated in Vaduz, Liechtenstein. Although Mr. Schreiber testified that he controlled various IAL bank accounts, it was not established in the evidence before me who controlled the company.

Mr. Haastert sent a second letter to Mr. Schreiber the following day, October 31, 1985,²⁵ authorizing Bitucan to act as Thyssen’s agent for transactions involving military products in a number of specified countries, including Canada. Among the services Bitucan would provide he listed procuring the necessary approvals from Canada for military export permits. Mr. Schreiber would be paid commissions based on sales made in accordance with the contract. The amount of the commission paid would depend on the nature of the sale and certain deductions.

Some time before July 10, 1985, Mr. Schreiber began to meet personally with Canadian government officials and to lobby them. These meetings occurred before the negotiations between Mr. Schreiber and Thyssen on their agreement were concluded. Once this agreement was in place, Mr. Schreiber initiated the process to incorporate Bear Head Industries.²⁶ He became chairman of Bear Head Industries and hired lobbyists to promote the Bear Head Project. Mr. Schreiber’s personal lobbying on behalf of Bear Head Industries continued throughout the life of the Bear Head proposals.

CONCLUSION OF THE FIRST BEAR HEAD PROPOSAL

As confirmed by Mr. Swain, the first Bear Head proposal was withdrawn by Thyssen after an article written by Jeffrey Simpson was published in the *Globe and Mail* on February 14, 1986.²⁷ That article highlighted the alleged conflict in cabinet over the project. Mr. Simpson wrote that Thyssen was seeking from the federal government a five-year export permit to ship products manufactured in Cape Breton to countries in the Middle East and Algeria. Thyssen, he noted, would not be able to acquire such permits from the German government.

Long after the first Bear Head proposal had been abandoned by Thyssen, Mr. Swain, by then deputy minister of industry, science and technology, reviewed the background to Bear Head in a memorandum dated December 15, 1993, to John Manley, his minister in the new Liberal government. Mr. Swain explained that the first proposal involving the Bear Head Project was withdrawn “[b]ecause the company could not obtain a multi-year export licence.”²⁸ Ironically, Thyssen’s first Bear Head proposal failed because there was no political appetite in Canada to sell military equipment to countries in the Middle East, yet at least one factor in Thyssen’s decision to push the project in Canada had been to get around Germany’s prohibition of sales to that same area.

Despite this setback, Thyssen’s interest in Canada did not wane. After the first Bear Head proposal failed to gain traction with Canada, Thyssen entered into discussions with GMDD on a joint venture to produce both tracked (Thyssen’s product) and wheeled (GMDD’s product) armoured vehicles.²⁹ The negotiations failed, and, in his memorandum of December 15, 1993, Mr. Swain provided details explaining the termination of the agreement. Thyssen / Bear Head Industries asked the Department of Industry, Science and Technology (DIST, or DRIE, as it then was) “to broker a Thyssen / Diesel Division General Motors (DDGM) joint venture in Canada,” Mr. Swain wrote. “It was a 50/50 undertaking for both wheeled and tracked armoured vehicles for global markets. Not long after the agreement had been reached, DDGM reported that Thyssen had attempted to circumvent their joint venture agreement by pursuing unilateral direct sales of Thyssen’s tracked vehicles to DND [Department of National Defence]. DDGM reacted by terminating the agreement.”³⁰

Second Bear Head Proposal

Termination of the Thyssen / GMDD joint-venture discussions did not mean that the Bear Head Project lay moribund. By September 1987 the Bear Head proposal had been reformulated and now focused more on the U.S. market for armoured vehicles.³¹ As part of this new proposal, Thyssen sought a start-up grant of \$25 million from the federal and Nova Scotia provincial governments and a directed sole-source contract for 250 light armoured vehicles, valued at about \$425 million, from the Department of National Defence.

On December 7, 1987, after a November 30 meeting with Senator Lowell Murray, the minister responsible for ACOA from June 6, 1987, to September 15, 1988, Mr. Schreiber summarized recent developments in the Bear Head Project in a letter to him.³² Enclosed with it was a proposed “letter of intent” setting out what Mr. Schreiber wanted to obtain from the Government of Canada. This “draft letter” echoed the company’s one major condition for moving forward with the project – a commitment from the Government of Canada to purchase a minimum of 250 vehicles. Senator Murray testified that he turned the letter over to ACOA officials who were engaged in discussions with Thyssen and also to their counterparts in both the

Department of National Defence and the “Department of Industry” [Department of Regional Industrial Expansion].

AGREEMENT BETWEEN THYSSEN AND MR. SCHREIBER, 1987

Mr. Schreiber and Thyssen engaged in further negotiations in 1987 which resulted in a letter from Thyssen to IAL dated November 26, 1987, clarifying the agreements that had been reached between them.³³ In the letter, the following points are noted:

- “Mr. Schreiber has promised to obtain for Thyssen Industries Ltd. binding approvals to make Bear Head Peninsula available free of charge, to obtain the required infrastructure and sufficient work in the initial phase.”
- Thyssen was to “be given a binding commitment ... from the Canadian government, that the plant to be constructed in Bear Head will be awarded a contract for at least 300 armoured vehicles weighing between 20 and 40 t [tons], with delivery starting in 1992.”
- Subject to the foregoing conditions, Thyssen “approved payment of a contingency fee to Mr. Schreiber through International Aircraft Leasing Ltd. in the amount of Can.\$4 million.”

NOVA SCOTIA AGREEMENT

As part of his agreement with Thyssen, Mr. Schreiber, on behalf of Bear Head Industries, undertook to obtain the requisite land on the Bear Head Peninsula of Cape Breton at no cost to Thyssen. The Province of Nova Scotia entered into a conditional agreement with Bear Head Industries on October 30, 1987.³⁴

Pursuant to that agreement, Bear Head Industries was given the exclusive and irrevocable option to purchase land on the Bear Head Peninsula at a price to be determined by independent evaluations.³⁵ The agreement also granted Bear Head Industries an interest-free loan from the provincial government equivalent to the purchase price of the land to be acquired. The loan was to be deemed repaid once Bear Head Industries had created 300 full-time direct jobs for a period of three years. The agreement was subject to two conditions: that Bear Head Industries enter into a memorandum of understanding (MOU) with the province and, “to the extent required by the Province[,] with the Government of Canada in respect of financial assistance required to implement the project”; and that it activate the project before November 1, 1988, in a manner acceptable to the province.

FIRST COMMISSION PAYMENT

The agreement between Nova Scotia and Bear Head Industries³⁶ triggered a commission payment from Thyssen to IAL in the amount of \$1.9 million.³⁷ An exchange of letters between IAL and Thyssen officials confirms the payment.³⁸

On December 24, 1987, in a letter from IAL to Thyssen, a payment of \$1.9 million, part of the commission due to IAL, was requested as follows:

In view of the fact that we have fulfilled to your satisfaction the first part of the services we promised (procurement of property), and that the Letter of Intent will almost certainly be issued, we trust you agree that we can now go ahead and submit an invoice for a portion of our fee. We accordingly ask that you release the partial sum of Can.\$1.9 million to our credit. Please transfer this amount to our account No. 235.972.029 CA\$ at the Verwaltungsund Privatbank AG, FL-9490 Vaduz.³⁹

On December 28, 1987, Mr. Haastert, on behalf of Thyssen, replied to this letter. He wrote that he was pleased to acknowledge the “first significant partial success” [the signing of the Nova Scotia agreement] and stated that Thyssen had transferred the Can\$1.9 million to a specified account.⁴⁰ Mr. Haastert noted that Thyssen’s agreement to accelerate the release of the payment on account was done only because of the express guarantee that the remaining prerequisites would be met in the near future. Banking documents confirm that payment was made on December 30, 1987.⁴¹

In his testimony, Mr. Schreiber confirmed this request for a \$1.9 million advance from Thyssen on December 24, 1987. He stated that the total advance went first to IAL and later to himself.

Mr. Schreiber confirmed that his financial arrangement with Thyssen included two loans, one to him and the other to IAL. The first loan, for \$1.5 million, was made to Mr. Schreiber personally on December 23, 1986.⁴² The second loan, for \$1 million, was made to IAL. That loan was confirmed in a document dated December 19, 1988, and executed by both Thyssen and IAL.⁴³

THE UNDERSTANDING IN PRINCIPLE

On September 27, 1988, approximately eight weeks before the Canadian federal election on November 21, 1988, the Government of Canada and Bear Head Industries signed an understanding in principle (UIP). Phase I of the UIP addressed Bear Head Industries’ construction of an initial plant “to manufacture defence products for the North American markets.”⁴⁴ Phase II addressed Bear Head Industries’ diversification into heavy civilian manufacturing production targeted at Canadian and international markets, within 12 months of starting production under Phase I.

Mr. Schreiber signed the UIP on behalf of Bear Head Industries, and three cabinet ministers signed on behalf of the Government of Canada: Gerald Merrithew, the minister responsible for ACOA; Perrin Beatty, the minister of national defence; and Robert de Cotret, the minister of regional industrial expansion. The signing of the UIP was the result of many months of discussions and negotiations between Mr. Schreiber, acting for Bear Head Industries, and various government officials.

By entering into the UIP, the Government of Canada undertook to consider the participation of Bear Head Industries in the light armoured vehicle (LAV) procurement program.⁴⁵ According to clause 7 of the UIP, its terms did “not create any enforceable, legal or equitable rights, nor obligations, but merely serve to document the: (a) parameters that have been set; and (b) areas on which discussions have been held, and understandings in principle reached.” The UIP provided that it could “be complemented by future Memoranda of Understanding.”⁴⁶ According to an *aide-mémoire* prepared by ACOA on September 19, 1988, Thyssen “originally sought a directed contract from the Government to provide DND with 250 LAVs.”⁴⁷ Over time, Thyssen softened its position considerably and agreed to proceed on the basis of established government regional and industrial development assistance, with the understanding that the company would be considered for participation in the LAV program.⁴⁸

In a letter dated September 23, 1988, from Senator Murray to Mr. Schreiber, the UIP was described as an “appropriate interim vehicle to advance the Bear Head initiative.” According to the letter, Mr. Schreiber had agreed with that description. The UIP did not commit the government to “any military or other procurement projects” with which Mr. Schreiber had any interest.⁴⁹ In his testimony, Mr. Schreiber agreed that the UIP was required to “make things happen,” and that it was important for commission monies to be paid.⁵⁰

POSITIONS IN CANADIAN GOVERNMENT AT TIMES RELEVANT TO THIS REPORT

PRIME MINISTERS, 1984–95	
Brian Mulroney	September 17, 1984–June 24, 1993
Kim Campbell	June 25, 1993–November 3, 1993
Jean Chrétien	November 4, 1993–December 11, 2003
CHIEFS OF STAFF TO PRIME MINISTER MULRONEY, 1987–93	
Derek Burney	February 1987–January 1989
Stanley Hartt	January 31, 1989–September 1, 1990
Norman Spector	September 1, 1990–February 15, 1992
Hugh Segal	February 16, 1992–93
David McLaughlin	1993–June 24, 1993
MINISTERS OF NATIONAL DEFENCE, 1986–95	
Perrin Beatty	June 30, 1986–January 29, 1989
William McKnight	January 30, 1989–April 20, 1991
Marcel Masse	April 21, 1991–January 3, 1993

POSITIONS IN CANADIAN GOVERNMENT AT TIMES RELEVANT TO THIS REPORT (CONTINUED)

MINISTERS OF NATIONAL DEFENCE, 1986–95 (CONTINUED)	
Kim Campbell	January 4, 1993–June 24, 1993
Thomas Siddon	June 25, 1993–November 3, 1993
David Collenette	November 4, 1993–October 3, 1996
MINISTERS OF INDUSTRY,* 1984–95	
Sinclair Stevens	September 17, 1984–May 12, 1986
Michel Côté	June 30, 1986–August 26, 1987
Robert René de Cotret	August 27, 1987–January 29, 1989
Benoît Bouchard	February 23, 1990–April 20, 1991
Michael Wilson	April 21, 1991–June 24, 1993
Jean Charest	June 25, 1993–November 3, 1993
John Manley	November 4, 1993–October 16, 2000
MINISTERS RESPONSIBLE FOR ATLANTIC CANADA OPPORTUNITIES AGENCY (ACOA), 1987–93	
Lowell Murray	June 6, 1987–September 15, 1988
Gerald Merrithew	September 15, 1988–January 29, 1989
Elmer MacKay	January 30, 1989–April 20, 1991
John Crosbie	April 21, 1991–June 24, 1993
PRESIDENTS OF ACOA, 1987–93	
Donald McPhail	President designate: June 5, 1987–September 14, 1988 President: September 15, 1988–August 31, 1989
Peter Lesaux	September 1, 1989–June 24, 1993
CLERK OF THE PRIVY COUNCIL AND SECRETARY TO THE CABINET, 1985–94	
Paul Tellier	August 12, 1985–June 30, 1992
Glen Shortliffe	July 1, 1992–March 27, 1994

* On February 23, 1990, the name of the Department of Regional Industrial Expansion was changed to the Department of Industry, Science and Technology. The department is now known as Industry Canada.

ROLES OF DEPARTMENTS AND INDIVIDUALS IN LEAD UP TO THE UIP

Atlantic Canada Opportunities Agency

ACOA became involved in the Bear Head Project on June 6, 1987, the day the department's creation was announced. Senator Lowell Murray testified that he received the Bear Head file from Mr. Mulroney while on a government plane travelling from Ottawa to St. John's, Newfoundland.⁵¹ In St. John's Mr. Mulroney was to announce the creation of ACOA as well as the appointments of Senator Murray as the minister responsible for the agency and of Donald McPhail as its president designate. While on the plane, Mr. Mulroney handed Senator Murray and Mr. McPhail a thin file concerning the Bear Head Project and said, "Here is something you may want to look at."⁵²

ACOA became operational on June 8, 1987,⁵³ and, right from the start, it acted as a major supporter of the Bear Head Project. As the department responsible for the coordination of all federal regional economic development activities in Atlantic Canada, ACOA held the view that Thyssen's proposal offered "considerable economic benefits, including substantial employment, and opportunities for technology transfer in a particularly underdeveloped region of Canada."⁵⁴

Soon after receiving the Bear Head file, Senator Murray came to understand that ACOA was the only department in government that was interested in advancing the project. ACOA promoted the economic benefits that Thyssen's proposal offered,⁵⁵ and, for approximately one year, discussions among government departments about the project were "fairly substantive."⁵⁶ In addition to the proposal itself, Senator Murray thought that certain benefits could be derived from "introducing some competition into an important area of government procurement."

In the summer and fall of 1988, ACOA officials had discussions with Mr. Schreiber, who would eventually sign the understanding in principle on behalf of Bear Head Industries, "a subsidiary which is one hundred percent (100%) owned by Thyssen."⁵⁷ The purpose of these talks was to ascertain from Thyssen the minimum undertakings it required from the Government of Canada to allow the project to proceed.⁵⁸ The discussions initially concluded with a draft UIP on July 15, 1988,⁵⁹ between the Government of Canada (ACOA, DRIE, and DND) and Bear Head Industries. In it, Canada undertook to ensure that Bear Head Industries would participate in the government's LAV procurement program, subject to certain provisos that imposed obligations on Bear Head.

The July 15 draft UIP immediately caused concerns.⁶⁰ For example, on July 19, 1988, at the request of Derek Burney, the chief of staff to Mr. Mulroney, Ward Elcock, the chief legal officer in the PCO, provided a legal opinion on the proposed UIP. In it he stated:

As to clause 4(b)(ii) which refers to Thyssen participating in the LAV project, I do not believe there is any obligation to proceed with the project set out in the clause. However, clearly Thyssen is entitled under that clause, to participate in the project itself provided that it meets the qualifications set out in the clause. It is not clear to me from reading those qualifications that Thyssen if it were not successful in the tender process, would not be able to participate in the project. In other words the qualifications do not appear to require that Thyssen be the winner of whatever tender process is put in place for the LAV project.⁶¹

Despite Senator Murray's efforts to advance the Bear Head file, according to a memorandum dated August 31, 1988, sent by Wynne Potter, the vice-president of ACOA, to its president designate, Mr. McPhail, the deputy ministers at the Departments of Regional Industrial Expansion (Cliff Mackay) and National Defence (Ed Healey) were both planning to advise their ministers (Mr. de Cotret and Mr. Beatty, respectively) not to sign the UIP.⁶²

A flurry of negotiations involving various government departments and Thyssen followed, spurred by the desire on the part of ACOA and Mr. Schreiber to keep the Bear Head Project alive during the period leading up to the federal election. These negotiations led to amendments to the draft UIP which softened Canada's commitment to Thyssen with respect to the LAV procurement program. For example, the draft UIP was modified to read that the minister of national defence "will consider the participation of the Company in the Light Armoured Vehicle Procurement Program."⁶³

Referring to the negotiations conducted during the summer and early fall of 1988, Senator Murray said in his testimony before me that, in September 1988, he was highly engaged in discussions with his ministerial colleagues on the Bear Head matter. He also had discussions with Fred Doucet, who by then was a lobbyist for Mr. Schreiber. According to Senator Murray, during the summer of 1988 it became clear that the government would not be able to conclude any agreement with Bear Head Industries before the general election. He said that the government's whole strategy then focused on finding a way to put the project on ice for a couple of months.

What was desired, Senator Murray explained, was a glorified letter of comfort that the government and Bear Head Industries could sign in order to keep the project alive over the election period. This document would enable the Mulroney government, or some other government, to come back to the project when the election was over. In early September 1988 efforts were directed at seeking the signatures of both Mr. de Cotret and Mr. Beatty.⁶⁴ After meeting with Senator Murray on September 12 and 14, 1988, respectively, both ministers agreed to sign the UIP. The September 14 meeting was chaired by Mr. Burney.⁶⁵

The UIP was finally signed by Mr. Schreiber on September 25⁶⁶ and by the two ministers on September 27, 1988.⁶⁷

Department of National Defence

In the summer of 1988 the UIP did not enjoy support from the Department of National Defence. It was but “one of several unsolicited proposals” which requested lowered, or no, competition in bidding for contracts.⁶⁸ The department expressed other concerns too, about the source of the funds required, the undefined operational requirements of the program, and “Thyssen’s ability to meet DND’s operational requirements.”⁶⁹ When Mr. Beatty, the minister of national defence at the time, testified before me, it seemed that his major concerns had been twofold: that the procurement process used by the military be an open, genuinely competitive process;⁷⁰ and that the military obtain the best equipment at the most competitive costs and have unfettered discretion in procuring it.

In September 1988 Mr. Beatty received confirmation from Senator Murray that the “LAV contract would be put to open public competition.”⁷¹ That same month, the impact that the UIP would have on the department’s procurement options was the subject of discussions among Mr. Beatty, Senator Murray, and Mr. Burney. As noted above, on September 14, 1988, Mr. Burney “chaired a meeting attended by Senator Murray and Mr. Beatty.”⁷² Mr. Beatty “agreed to sign the [UIP] subject to further Ministerial discussion” and to the following conditions:

1. the company be informed clearly that in signing the UIP, the Minister of National Defence was not binding the Government to proceed with the LAV project;
2. a letter be sent from the DND Minister to the ACOA Minister noting that in signing the Understanding in Principle, the Minister of National Defence was not limiting his discretion to determine the timing of the LAV project, and to recommend a preferred bidder to Cabinet; and that
3. communications of the initiative be “low-key.”⁷³

Mr. Mulroney

Mr. Mulroney also testified about the UIP. He said it was of interest to the Government of Canada because Thyssen was trying to make a deal with one of the big American defence suppliers. The issue raised by Mr. Clark, the secretary of state for external affairs, about selling to countries in the Middle East had been resolved. While testifying, Mr. Mulroney noted that he also had a political interest to ensure that the operations at GMDD in London, Ontario, would not be compromised by the signing of the UIP.

As confirmed by Mr. Mulroney, he either discussed with Senator Murray or was advised by him that a “statement of intent” might be negotiated with Bear Head Industries.⁷⁴ He remembered discussing with Senator Murray the level of commitment arising from signing such a document. In this regard, Mr. Mulroney requested that Senator Murray have Frank Iacobucci, then deputy minister of justice, involved in drafting a clause to ensure that the government would not be contractually bound by

signing the agreement. Mr. Mulroney later received assurance from both Mr. Tellier and Senator Murray that Mr. Iacobucci had provided his input on the document.

Mr. Mulroney confirmed that, between 1985 and 1993, he did not pressure key individuals or order or direct anyone to approve the Bear Head Project. He also confirmed that he was not involved in any way in Mr. Beatty's signing the UIP.

I accept completely what Mr. Mulroney had to say in that regard. No one who testified before me asserted that Mr. Mulroney applied pressure or attempted to influence the decision-making process so far as the Bear Head Project was concerned.

Mr. Burney

Mr. Burney, the chief of staff to Mr. Mulroney from February 1987 to January 1989, confirmed that there were good and valid political reasons to be either in favour of or against the Bear Head Project. Many political factors had to be considered, though the most significant was regional development.

In the months preceding the signing of the UIP, Mr. Burney "was endeavouring to reconcile the differences among ministers on the project."⁷⁵ In the summer of 1988 he provided directions both to the PCO and ACOA to ensure that the UIP was drafted in such a manner that "no significant commitment" on the part of the government would arise from signing the document.⁷⁶ Mr. Burney also chaired the meeting with Senator Murray and Mr. Beatty on September 14, 1988, 13 days before the UIP was signed,⁷⁷ at which Mr. Beatty agreed to sign the UIP subject to certain conditions.⁷⁸ Mr. de Cotret had previously agreed to sign the UIP during a meeting with Senator Murray on September 12, 1988.⁷⁹

Mr. Burney testified that it was fairly common practice for the chief of staff to take on this kind of mediation role. He said he may have informed the prime minister that he was endeavouring to reconcile the differences among ministers on the project. At no time, however, did Mr. Mulroney direct him on how he should handle the file on the Bear Head Project.

Privy Council Office

Paul Tellier was the clerk of the privy council from August 1985 to June 1992. In his testimony before me, he stated that the PCO had very limited contacts with ACOA and was never deeply involved in the Bear Head Project itself. Mr. Tellier explained that the role of the PCO was to ensure that, "on any given file all the dimensions of the file are brought forward," so that any decision would be an "enlightened" one.⁸⁰ The Bear Head Project had dimensions relating to foreign policy, defence policy, procurement process, export control, and economic policy. According to Mr. Tellier, public servants working in the PCO see themselves as the guardian of due process.

A memorandum prepared by an official at ACOA dated July 20, 1988, recorded the PCO's position on the "Thyssen issue":

On substantive grounds, PCO is briefing that the Thyssen issue is not urgent; that the project is ill-conceived and at best, premature; that the project compromises the Government's procurement policy and process; that identification of exact sources of funding and likely program draws are lacking, etc.⁸¹

The memorandum also stated that the PCO felt "bruised" for several reasons: ACOA officials seemed to have channelled information to the prime minister without going through the PCO; and the PCO believed that the proposed UIP was a legally binding agreement that should be guided by the PCO through the formal cabinet committee process. (In passing, I note that a meeting of the Cabinet Committee on Priorities and Planning, authorizing the responsible ministers to sign the UIP with Bear Head Industries "regarding the establishment of a heavy-industry manufacturing facility in Cape Breton," was held on September 27, 1988.)⁸²

According to Mr. Tellier, the PCO was not opposed to the project itself. Rather, it strongly objected to the attempt to avoid following due process. On July 19, 1988, Mr. Tellier urged the prime minister to request that due process be respected.⁸³ In his opinion, Mr. Tellier said, the PCO succeeded in discharging its mandate regarding due process because the Bear Head Project, "using the political channels[,] never got anywhere."⁸⁴

Mr. Tellier related that, in July 1988, the PCO was concerned about the degree of enforceability of the proposed UIP: it "was a question of toning down the wording to make sure that this would not create a commitment on the part of the Crown" and to limit the potential liabilities of the government. The UIP was therefore carefully drafted to reduce the degree of commitment: for instance, Mr. Tellier said, the document was entitled "Understanding in Principle" rather than the more usual "Agreement in Principle."⁸⁵ The project's promoters, Thyssen and ACOA, believed that the UIP was required. In contrast, those in the public service who believed that "the exposure of the Crown should be limited" insisted on diluting "whatever was put forward, if something was required to be put forward."⁸⁶ Ultimately, the UIP was signed for the purpose of keeping "a glimpse of hope alive that this project could see the light of day" in the future.⁸⁸

Mr. Doucet

Mr. Doucet and Mr. Mulroney were long-time friends, having met when they both attended St. Francis Xavier University in Nova Scotia in the mid-1950s. In September 1984 Mr. Doucet became a senior adviser in the PMO, a position he held until 1987. After Mr. Doucet left the PMO, he became ambassador for and chairman of the Organizing Committee for International Summits in the Department of External Affairs. He resigned from this position on August 16, 1988, and became a lobbyist.⁸⁹

According to Mr. Schreiber, from late summer or early fall 1988 to 1995 Mr. Doucet was a registered lobbyist promoting the Bear Head Project, though he never negotiated a formal retainer or mandate with him. Initially, Mr. Schreiber stated that he had paid Mr. Doucet one \$90,000 payment soon after he became a lobbyist. Later, however, he testified that he gave Mr. Doucet money both in 1988 and in 1989, and that other payments could have been made to Mr. Doucet through Bear Head or Merkur Handels, a corporation based in Liechtenstein.

Mr. Schreiber indicated that Mr. Doucet began working for him before the November 1988 payment of \$90,000. This payment was made to Mr. Doucet, Mr. Schreiber stated, for obtaining Mr. Beatty's signature on the UIP. Mr. Schreiber related that Mr. Beatty's signature was the last of the four on the UIP, but he did not "think" he had any information on the role Mr. Doucet played in obtaining this signature.⁹⁰ Mr. Schreiber admitted that it was Frank Moores, a principal in Government Consultants International (GCI), who made the decision about paying Mr. Doucet. GCI was a lobbying firm founded by Mr. Moores and Gerald Doucet (Fred Doucet's brother). A third principal, Gary Ouellet, later joined the firm. When asked for evidence to confirm his assertion, Mr. Schreiber stated that it was Mr. Moores who made the decision to pay success fees to everyone because it was his money. Mr. Moores is now deceased.

According to Mr. Doucet, in the fall of 1988, shortly after he left government, Mr. Schreiber retained him to promote the Bear Head Project. Mr. Doucet recalled that he first met Mr. Schreiber in 1988 at a social function, but he had no memory whether they discussed the Bear Head Project on that occasion. Mr. Doucet did not remember ever talking to Mr. Schreiber about the Bear Head Project while he was still employed by the government. That professed lack of memory, however, did not prevent Mr. Doucet from denying that Mr. Schreiber ever raised the subject with him or that he ever raised the subject with Mr. Schreiber.⁹¹

Mr. Doucet testified that he had a business arrangement with Mr. Schreiber in which he (Mr. Doucet) was paid approximately \$5,000 a month for a period of four to five years. He also said that he offered free advice to Mr. Schreiber beyond the period of the retainer. Mr. Doucet confirmed that there would have been a paper trail covering the monies paid to him over the years by Mr. Schreiber, or one or more of his companies, except for the fact that, on the advice of his accountant, his files had been destroyed once they were no longer needed for tax purposes.

Mr. Doucet claimed to have no recollection of the events surrounding the \$90,000 invoice he submitted to Bitucan, although he acknowledged that it was a large amount of money for someone who had just left government employment. Notwithstanding Mr. Doucet's inability to recall anything whatsoever about the \$90,000 payment, he said that it was paid as a retainer. He testified that the nature of his business practice at the time was to operate on a retainer basis. According to Mr. Doucet, issuing an

invoice with the general descriptive phrase “Professional Services” was consistent with the way he traditionally invoiced clients.⁹² Although Mr. Doucet did not recall with any specificity the nature of the professional services he had rendered, if any, before November 2, 1988, he stated that he would have already begun his lobbying activity.

Mr. Doucet was sure he had spoken to Mr. MacKay and said that it was “a possibility” that he also spoke with Senator Murray.⁹³ He did not have any recollection of meeting or speaking with Mr. Beatty. Mr. Doucet also had no recollection of checking with Mr. Beatty on or about August 8, 1988, despite an entry in his agenda for that day which reads, “Check with Perrin Beatty.”⁹⁴

Most important, Mr. Doucet categorically denied asking Mr. Beatty to sign the UIP. He stated that it would have been a “remarkable request” on his part, which he would never have made.⁹⁵

Once again, because of a claimed loss of memory, Mr. Doucet was unable to tell me anything about another notation in his agenda, this time for August 9, 1988. That notation refers to Lawrence O'Neill, Lowell Murray, and Perrin Beatty, respectively the member of parliament in the area where the Bear Head Project was to proceed, the minister responsible for ACOA, and the minister of national defence. That notation obviously means something.

I am driven to conclude that the August 9 notation must have related to the Bear Head Project. I am hard pressed not to wonder what Mr. Doucet, then ambassador for and chairman of the Organizing Committee of International Summits, was doing calling politicians who, ostensibly at least, had nothing whatsoever to do with international summitry but were integrally involved in the Bear Head Project.

Mr. Beatty did not recall any dealings with Mr. Doucet on the Bear Head Project. Senator Murray provided evidence concerning Mr. Doucet's early involvement in the Bear Head Project and during the period leading to the signing of the UIP. His personal notes demonstrate that, as early as June 1987, Mr. Doucet was not only supportive of the Thyssen project but had reported to Senator Murray that the prime minister was “strongly” endorsing it.⁹⁶ Mr. Doucet conveyed to Senator Murray that he “should speak to Beatty” and tell him “It's a must.”⁹⁷ I note, once again, that this activity on the part of Mr. Doucet occurred while he was employed as ambassador and chairman of the Organizing Committee of International Summits, not as an adviser to the prime minister. In my opinion, these were questionable activities for a person in the position Mr. Doucet held at the time. There appears to be no nexus whatsoever between Mr. Doucet's government responsibilities and the Bear Head Project.

Senator Murray's testimony, agendas, and personal notes indicate that, beginning in the latter part of August 1988 and throughout the month of September, Mr. Doucet was actively lobbying on behalf of Thyssen. Senator Murray's notes included an August 28, 1988, entry in which Mr. Doucet is quoted as referring to discussions with the prime minister regarding the signatures on the UIP. The note

reads: "Final language in Thyssen MOU will be presented to Justice tomorrow. PM told me if that were done[,] next step would be to get 3 Mins. Only recalcitrant is Beatty. The rest is for L to decide."⁹⁸

Senator Murray testified that, although he wrote to Mr. Mulroney on several occasions seeking direction on the Bear Head Project, he never received a response to his letters.

On September 1, Mr. Doucet called Senator Murray.⁹⁹ The next day Senator Murray placed calls to Mr. Beatty and Mr. de Cotret.¹⁰⁰ On September 12, 1988, Senator Murray placed a call to Mr. Doucet at noon and received a phone call from him at 5:15 p.m.,¹⁰¹ after Senator Murray had met with Mr. de Cotret and secured a commitment that he (Mr. de Cotret) would sign the UIP.¹⁰² Senator Murray also received a phone call from Derek Burney 40 minutes after receiving Mr. Doucet's call.¹⁰³ Two days later Mr. Beatty agreed to sign the UIP subject to the conditions outlined earlier.

Government Officials' Evidence Regarding the PM's Role

Mr. Burney

Mr. Burney testified that he did not receive direction from Mr. Mulroney on how to handle the Bear Head Project. Had he had been given explicit or express direction from the prime minister, he said he would think he would recall it.¹⁰⁴

Mr. Beatty

According to Mr. Beatty, at no time did he receive directions of any kind from Mr. Mulroney as to how to deal with the Bear Head file.

Mr. Murray

According to Senator Murray, Mr. Mulroney gave him the file on June 6, 1987, and never raised the matter with him again – even though he (Senator Murray) made requests for directions from time to time.¹⁰⁵

On July 12, 1988, during the period when the UIP was being promoted by Thyssen and ACOA, Senator Murray wrote to the prime minister, suggesting, "If the Bearhead Project is to be brought to fruition, you may wish to share your views with our colleagues, Mr. de Cotret and Mr. Beatty, in order to solicit their support for this approach."¹⁰⁶ Senator Murray testified that he never received a response to his letter from either the prime minister or his office. Senator Murray later had discussions with both Mr. de Cotret and Mr. Beatty, and neither mentioned hearing from the prime minister.

In my view, there is no evidence whatsoever to suggest that Mr. Mulroney ever applied pressure or attempted to influence anyone regarding the signing of the UIP by his ministers. In fact, the evidence is to the contrary.

THYSSEN AND BEAR HEAD INDUSTRIES: REPRESENTATIVES AND PARTIES THAT LOBBIED OR RENDERED OTHER PROFESSIONAL SERVICES FOR THEM

REPRESENTATIVES OF THYSSEN AND BEAR HEAD INDUSTRIES	
Karlheinz Schreiber	Chairman of Bear Head Industries
Jürgen Massmann	Manager at Thyssen / president of Bear Head Industries
Winfried Haastert	Member of Thyssen's board of directors
Greg Alford	Vice-president of corporate affairs of Bear Head Industries
Frank Duff Moores Government Consultants International (principals, Frank Moores, Gerald Doucet, and Gary Ouellet) Lemoine Consultants Inc. (Mr. Ouellet's company) Doucet & Associates (the law firm in which Gerald Doucet was a principal)	These parties provided lobbying or other professional services for Bear Head Industries for an unknown period of time
Fred Doucet Consulting International	Mr. Doucet lobbied for Mr. Schreiber from 1988 to 1993 or 1995
Marc Lalonde	Mr. Lalonde lobbied for Mr. Schreiber from October 1993 to August 1995

Commission Payment on the Signing of the UIP

Mr. Schreiber confirmed that the signing of the UIP triggered a \$2 million "success fee" payment by Thyssen to IAL.¹⁰⁷

In the weeks following the signing of the UIP, a series of invoices was submitted to Bitucan (a corporation of which Mr. Schreiber was the chairman and main shareholder) by Fred Doucet Consulting International, Doucet & Associates (the law firm in which Fred Doucet's brother, Gerald Doucet, was a principal), Frank and Beth Moores, GCI (whose principals were Frank Moores, Gerald Doucet, and Gary Ouellet), and Lemoine Consultants Inc. (Mr. Ouellet's company).¹⁰⁸ The GCI invoice was for the sum of \$250,000, and each of the other invoices was for \$90,000. All the invoices were paid in full by cheques issued on November 15, 1988, by Bitucan, including the invoice submitted by Lemoine Consultants, which was dated December 1, 1988.¹⁰⁹ Each of the invoices contained a brief description of the work provided, as follows:

- an invoice dated November 2, 1988, in the amount of \$90,000 for "Professional Services" from Fred Doucet Consulting International;
- an invoice dated November 2, 1988, in the amount of \$90,000 which read, "To services rendered by Gerald Doucet" from Doucet & Associates;
- an invoice dated November 8, 1988, in the amount of \$90,000 "For Services

rendered by Frank D. Moores on your behalf,” submitted on the letterhead of “Frank and Beth Moores”;

- an invoice dated November 10, 1988, in the amount of \$250,000 for “Consulting Services Rendered” from Government Consultants International; and
- an invoice dated December 1, 1988, in the amount of \$90,000 “For professional Services rendered” from Lemoine Consultants Inc.¹¹⁰

According to Mr. Schreiber, the payments represented one-time “success fee[s]” paid to the recipients for the work they performed on behalf of Bear Head Industries. As I observed earlier, the signing of the UIP had triggered a \$2 million payment from Thyssen to IAL.¹¹¹

What transpired thereafter can only be described as convoluted. First, IAL transferred \$710,000 to Merkur Handels. Then Bitucan sent an invoice to Merkur Handels for \$710,000 “for services rendered” for Merkur’s “industrial project in Indonesia.”¹¹²

In cross-examination, Robert Houston, counsel for Fred Doucet, asked Mr. Schreiber to explain the Indonesian connection. He responded that the president of Indonesia was a friend and that they did a lot of business together. Mr. Schreiber admitted that the convoluted transaction involving IAL, Merkur Handels, and Bitucan was devised to hide the fact that GCI was dealing with Thyssen “on a success fee.”¹¹³ As noted earlier, Mr. Moores is deceased, so he was not able to respond to that assertion by Mr. Schreiber.

Following receipt of the invoice from Bitucan for \$710,000, Merkur paid that amount to Bitucan – which proceeded to pay the monies as billed to Frank Moores and the others. Mr. Schreiber testified that “perhaps” Bitucan kept the \$100,000 that was left over after \$610,000 was paid out.¹¹⁴

In his testimony, Mr. Mulroney stated that he did not know about the existence of any of these payments at the time they were made.

Richard Wolson, Commission counsel, questioned Mr. Doucet about the invoice for \$90,000 he submitted to Bitucan and the payment in that amount which he received after the signing of the UIP. Mr. Doucet, who had left the services of the government only two-and-a-half months before he sent the invoice, conceded that \$90,000 was a substantial amount of money and a considerable hike from what he had been paid as a government employee. Notwithstanding that, Mr. Doucet insisted he had no memory of either the invoice he sent to Bitucan or the payment he received. He also testified that he did not know about the invoices rendered by the other individuals and companies at the time, nor did he remember discussing the payments with the recipients. In his interview with Commission counsel, he indicated that, at the time, he knew informally that GCI was working on the project.¹¹⁵

In my view, Mr. Doucet’s evidence that he did not recall the invoice he sent to

Bitucan Holdings Limited or the payment he received in the sum of \$90,000 is not, in the circumstances, credible. The payment of \$90,000 by Bitucan to Mr. Doucet at this time was a significant event, not one he would forget. His ability to recall details of less-significant events and conversations that occurred around the same time as the payment, or earlier, puts the lie to his assertion that he could not recall receiving a cheque for \$90,000.

AGREEMENT BETWEEN MR. DOUCET AND CANADA

Having alluded to Mr. Doucet's departure from government service two-and-a-half months before he received a "success fee" of \$90,000 from Bitucan when the UIP was signed, I think it appropriate at this point to consider the agreement between Mr. Doucet and the government pertaining to that departure.

Mr. Doucet was Mr. Mulroney's senior adviser from the time Mr. Mulroney became prime minister in 1984 until May 1987. He was then appointed ambassador and chairman of the Organizing Committee for International Summits with the "Foreign Affairs Department."¹¹⁶ Mr. Doucet resigned from this position effective August 16, 1988.

On August 18, 1988, the Treasury Board approved the terms of an agreement regarding Mr. Doucet's proposed post-employment activities.¹¹⁷ These terms were contained in a letter to Mr. Doucet written by Jean-Pierre Kingsley, the assistant deputy registrar general, Department of Consumer and Corporate Affairs, and dated August 9, 1988.¹¹⁸ Mr. Kingsley's responsibilities included "administering the Conflict of Interest and Post-Employment Code for Public Office Holders, 1985" (1985 Ethics Code).¹¹⁹ In that letter, Mr. Kingsley confirmed the arrangements that had been agreed on, including the waiver of the one-year limitation period for "making representation for or on behalf of any other person or entity to any department with which [Mr. Doucet] had significant official dealings, as specified" in subsection 42(b) of the 1985 Ethics Code.¹²⁰ Mr. Doucet was advised of Treasury Board's approval of the terms of the agreement in a letter dated August 25, 1988.¹²¹

Soon after leaving government service, Mr. Doucet reactivated his lobbying company, which focused on efforts to influence government departments and agencies but also performed public relations tasks for its clients.¹²² Although Mr. Doucet claimed in his testimony that he had no recollection of asking for a waiver of the "cooling-off" period provided for under the 1985 Code or of his discussions with Mr. Kingsley, he did acknowledge that he obtained such a waiver. He said he was sure that, at the time in question, he knew a waiver was needed if he was to enter private practice.

Mr. Doucet testified that he had no recollection of discussing a "cooling-off period" with Mr. Mulroney. While giving evidence before me, Mr. Mulroney indicated that he did not have any involvement in the post-employment waiver Mr. Doucet obtained from the government. He said he learned about the agreement in the course of either this

Inquiry or the proceedings of the House of Commons Standing Committee on Access to Information, Privacy and Ethics (Ethics Committee) into the Mulroney-Schreiber Affair, held in late 2007 and early 2008. He also did not think that Mr. Doucet informed him until “the months that followed the election” held in November 1988 that he (Mr. Doucet) was embarking on his own government lobbying business.¹²³

Commission counsel Nancy Brooks interviewed Mr. Kingsley, and the main points of the interview are set out in the Summary of Interview of Jean-Pierre Kingsley. With the consent of counsel for all the parties, this summary was made an exhibit in Part I of the Inquiry.¹²⁴ In the course of his interview, Mr. Kingsley stated that

he was asked by a senior government official, most probably Gerald Capello, Deputy Secretary, Personnel Policy Branch, Treasury Board Secretariat, to negotiate the terms of a termination agreement with Mr. Doucet for his resignation from the position of Ambassador and Chairman of the Organizing Committee for International Summits. Mr. Kingsley stated that he had previously negotiated some 60 agreements on behalf of the Government of Canada with Governor-in-Council appointees and government employees.¹²⁵

As set out in the summary, “Mr. Kingsley advised that Mr. Doucet requested the waiver of the limitation period under the Code. Mr. Kingsley stated that he had negotiated other agreements which included a similar waiver.”¹²⁶ Also, according to this summary:

Mr. Kingsley recalled that his approach in determining whether the waiver should be agreed to was based on consideration of the conditions in s. 61 of the 1985 Code applicable to reduction of the limitation period. According to Mr. Kingsley, Mr. Doucet’s health issues and his limited knowledge of significant government information weighed in favour of the waiver sought by Mr. Doucet. In accordance with his usual approach, Mr. Kingsley did not inquire into whether there were specific files or matters that would raise concerns. Furthermore, the Government still had the protection afforded by the unlimited in time “interdiction” in the 1985 Code, which prevented a former public office holder from “switching sides.”¹²⁷

Although Mr. Doucet had no recollection of informing Mr. Kingsley of his discussions with Senator Murray on the topic of the Bear Head Project, he did say that he would have answered all the questions put to him by Mr. Kingsley.¹²⁸

As noted above, the Treasury Board approved the agreement with Mr. Doucet on August 18, 1988. The summary reads: “With respect to the process for approval of any agreement made, Mr. Kingsley stated that the Agreement had to be, and was, approved by the Treasury Board. Mr. Kingsley stated that he was comfortable that all appropriate procedures and ethical considerations were taken into account. He would not have recommended the Agreement be approved had this not been the case.”¹²⁹

On the basis of the evidence before me, I believe that Mr. Mulroney played

no role whatsoever in the agreement entered into between Mr. Doucet and the Government of Canada when Mr. Doucet left employment with the government on August 16, 1988.

BEAR HEAD'S BUSINESS PLAN, 1988

The UIP dated September 27, 1988, required Bear Head Industries to provide "financial and other details associated with Phase I" of the Bear Head Project by October 21, 1988.¹³⁰ On October 20, 1988, Jürgen Massmann, the president of Bear Head Industries, requested that ACOA extend this deadline to December 15, 1988.¹³¹ A business plan was submitted in December 1988 but was deemed inadequate.¹³² In his testimony, Greg Alford, the former vice-president of corporate affairs of Bear Head Industries, agreed with the suggestion put forward by Commission counsel Evan Roitenberg that the project was plagued by difficulties relating to producing an acceptable business plan.¹³³ In questioning Mr. Alford, Mr. Roitenberg suggested that the lack of an adequate business plan on the part of Bear Head Industries seemed to be a theme from 1988 through 1991. Mr. Alford agreed that it would be "fair" to say that Thyssen was reluctant to formulate a business plan until its officers "had an understanding of what they were going to build on[,] what time frame[,] and in what quantity."¹³⁴

APRIL 1989 BUDGET / FIRST SOLE-SOURCE ORDER GRANTED TO GMDD, 1989

The April 1989 federal budget effectively terminated the LAV procurement program, which had contemplated the acquisition of 1,600 light armoured vehicles by the Canadian Department of National Defence.¹³⁵ Of all the Canadian programs, this one had been of greatest interest to Bear Head Industries. The termination of the LAV program meant that, in the foreseeable future, the only light armoured vehicle purchase by the Department of National Defence would be a small order of approximately 200 wheeled vehicles for the Reserve Forces. It was expected that this order would be filled by General Motors Diesel Division (GMDD) on a sole-source basis.¹³⁶

Following the April 1989 budget, the Bear Head proposal was revised in an effort to persuade the Department of National Defence not to provide the Reserve Forces with vehicles built by GMDD.¹³⁷ In a letter dated July 19, 1989, to William McKnight, the minister of defence, Mr. Massmann proposed "to provide over 200 well-protected and versatile tracked vehicles of the most modern design" at an estimated cost of Can\$250 million.¹³⁸ As part of the revised proposal, he suggested that the Department of National Defence use the vehicles to be acquired from Thyssen to replace vehicles then in service which were operating in critical roles. The replaced vehicles could then be used for the "Reserve training role."

Mr. Alford testified that he did not think the revised Bear Head proposal “went very far” inside the Department of National Defence.¹³⁹ On September 21, 1989, Mr. McKnight, the minister, wrote to Mr. Massmann and informed him that a contract for 199 wheeled vehicles had been awarded to GMDD.¹⁴⁰

On November 28, 1989, Mr. Schreiber wrote to Mr. MacKay to voice his frustration over “the situation around the Thyssen Industrie AG (Thyssen) plan to establish in Nova Scotia.”¹⁴¹ He stated that he was “at a loss to find any rational explanation to offer to the Thyssen Industrie Board, as to why they should continue their commitment to Canada.” In closing he said: “I am duty-bound to inform the Prime Minister of the serious situation the whole matter has reached. Will you want me to write to him directly or would you prefer to do so on my behalf?”

Mr. Alford testified that Thyssen felt the government’s decision to contract on a sole-source basis with GMDD was “a contradiction to the government policy of competitive procurement that had been described” to Thyssen. He explained that Thyssen was still confident it could “eventually be competitive in making a proposal and winning” a share of the larger LAV procurement, which had been delayed but was expected to be activated eventually.¹⁴²

DEVELOPMENTS IN 1990

Letter of Comfort, January 1990

On January 25, 1990, Mr. McKnight wrote a letter of comfort to Mr. Schreiber.¹⁴³ This letter was preceded by a spate of activity that involved, among others, Mr. Schreiber, Mr. Tellier, Mr. MacKay (the minister responsible for ACOA), Mr. McKnight, and Stanley Hartt (the chief of staff to the prime minister from January 31, 1989, to September 1, 1990).¹⁴⁴ The letter of comfort provided a “basis for discussions leading to the formalization of plans to proceed with the realization” of the Bear Head Project.¹⁴⁵ In it, Mr. McKnight confirmed that Bear Head Industries would “be given an opportunity to participate in the tendering for the contract.” However, this opportunity was subject to two conditions: the Canadian Forces’ deciding to acquire a multi-role combat vehicle (MRCV), and Bear Head Industries “satisfying in all respects the specifications and design requirements of the call for tenders and all contractual matters.”¹⁴⁶

Mr. McKnight testified that he sent this letter with no pressure from either Prime Minister Mulroney or the PMO.

Meeting of February 5, 1990

On February 5, 1990, representatives of Thyssen met with members from seven Canadian government departments – DND, PCO, DIST, External Affairs, Supply and Services Canada, Finance, and ACOA – at DND Headquarters in Ottawa. The meeting was chaired by Robert Fowler, the deputy minister of national defence.

The summary record of the discussions held during the course of this meeting discloses that Mr. Fowler informed Thyssen that Canada had no plans to purchase any tanks. Moreover, he said the plans to purchase LAVs were not only aimed at purchases “well in the future” but were also conditional on funding.¹⁴⁹ The record indicates that Mr. Fowler expressed his personal view that it was unlikely that Thyssen would secure a commitment for military equipment from the Canadian government. The participants discussed several other topics, including the point that Canada’s procurement policy was based on a principle of competitive bidding. Some criticisms were also brought up at the meeting, such as Canada’s unwillingness to give a “carte blanche” to investors seeking export permits, and rumours suggesting that the Department of National Defence was biased against the Thyssen proposal. In his testimony, Mr. Tellier explained: “[W]e had hoped that this would bring this thing to an end ... one way or the other,” and that Thyssen could have said it was “backing off” or “still interested to proceed but under different circumstances.”¹⁵⁰ Rather than being deterred by Mr. Fowler’s assessment, however, and the setback of the sole-source order granted to GMDD, Thyssen and Mr. Schreiber continued their efforts to obtain approval for the second Bear Head proposal.

Meeting Between Mr. Schreiber and Mr. Mulroney, July 3, 1990

A breakfast meeting was held on July 3, 1990, at 7 Rideau Gate, the federal government’s guesthouse, attended by Mr. Mulroney, Mr. MacKay, Mr. Schreiber, and David McLaughlin, the deputy chief of staff to the prime minister.¹⁵¹

The following day another meeting took place, which was attended by Mr. MacKay, Mr. Schreiber, and Paul Tellier.¹⁵² According to Mr. Mulroney, “I would have arranged that at Elmer’s [Elmer MacKay’s] request.”¹⁵³ Mr. Mulroney also said that Mr. Tellier “would only have seen [Mr. Schreiber] because I asked him to.”¹⁵⁴

Subsequent to that meeting, Mr. Tellier forwarded a memorandum to the prime minister on July 12, 1990.¹⁵⁵ It refers to Mr. Mulroney’s request that Mr. Tellier meet with Mr. MacKay and Mr. Schreiber and discloses that Mr. Tellier agreed with Mr. Schreiber’s view that the time was coming for the government to make a decision on the Bear Head Project. Mr. Tellier recommended to Mr. Mulroney that a full business plan be requested from Thyssen to facilitate a complete analysis of the proposal.

Mr. Tellier advised Mr. Mulroney that, if he felt a project proposal should be developed for cabinet, he might wish to have Mr. McKnight “prepare a proposal on a possible sole-source contract.”¹⁵⁶ Mr. Tellier also suggested that any such proposal

be assessed by Mr. MacKay and Benoît Bouchard, who at that time was minister of industry, science and technology and also the regional minister for Quebec. The proposal should, he said, evaluate the project from an economic and an industrial perspective and, in considering its costs, take both subsidies and tax credits into account. Finally, Mr. Tellier suggested that Mr. Mulroney ask Don Mazankowski, the deputy prime minister, "to chair a meeting to examine all aspects of the proposal and to report to [the prime minister]." ¹⁵⁵

Memorandum of Understanding, November 1990

In his letter to Mr. Mulroney dated October 10, 1990, Mr. Schreiber wrote that Mr. MacKay had suggested that Bear Head Industries should obtain a memorandum of understanding from the Government of Canada. "What is needed as soon as possible," he said, "is the signed MOU as proposed by Minister MacKay." ¹⁵⁶ In that same letter, Mr. Schreiber also referred to a meeting between Mr. Mulroney and him during the preceding month in which he had lobbied Mr. Mulroney for the MOU. According to Mr. Schreiber, because of the changing landscape caused by Bear Head Industries having formed associations with Trenton Works and Lavalin in Canada and some German companies, the MOU was required to satisfy these new partners. Mr. Schreiber indicated that the MOU would not result in additional commission payments to him.

Peter Lesaux, the president of ACOA from September 1, 1989, through to June 24, 1993, wrote a memorandum about the proposed MOU to Mr. MacKay, the minister responsible for ACOA, on November 23, 1990. ¹⁵⁷ Of interest is the statement by Mr. Lesaux that Mr. MacKay had given him instructions not to circulate the MOU within ACOA or interdepartmentally, and that no legal review of the MOU be undertaken. Mr. Lesaux, wisely in my view, recommended that a legal review of the MOU be conducted before it was signed.

When questioned by Mr. Roitenberg, Mr. MacKay was unable to recall why he did not want the MOU circulated. Nor was he able to remember whether a legal review was conducted. The MOU ultimately surfaced and was signed sometime in November 1990. ¹⁵⁸ Mr. Schreiber signed it on behalf of Bear Head Industries, and Mr. MacKay signed as the minister responsible for ACOA. It was not signed, however, by Mr. McKnight, the minister of national defence, even though there was a signature line on which he was intended to sign.

At this point, I pause to note that Mr. MacKay took no issue with Mr. Roitenberg when he suggested that he (Elmer MacKay) had received no approval from cabinet or the operations committee before he signed the MOU on behalf of the ministry responsible for ACOA.

As for the MOU itself, the preamble described the document as an "expression of intent" subject to the "condition precedent" that the parties enter into a more detailed

contract in the future.¹⁵⁹ The MOU contemplated that Bear Head Industries would construct a plant, and DND would undertake, subject to certain conditions, to sole-source to Bear Head an order for 250 Fox Armoured Personnel Carriers.

Mr. McKnight, who was minister of national defence in November 1990, testified that he had no recollection of the MOU. As noted above, he never signed it.¹⁶⁰ Lacking this necessary signature, the November 1990 MOU died. So ended Mr. Schreiber's efforts to seek government approval of the second Bear Head proposal. However, almost immediately, Mr. Schreiber and Bear Head Industries changed tack and began efforts to gain acceptance for a third Bear Head proposal.

Third Bear Head Proposal

LOCATION OF THE BEAR HEAD PROJECT MOVES TO THE MAINLAND

Sometime before November 28, 1990, the proposed location for the Bear Head Project was changed from Cape Breton to the mainland of Nova Scotia.¹⁶¹ In a letter dated August 21, 1991, to Michael Wilson, the minister of industry, science and technology, Mr. Schreiber provided the rationale for this change. He explained that Thyssen had been drawn to the initial location because of the Cape Breton Tax Credit, which offered tax incentives to industry that invested there before the end of 1992. Thyssen now considered this deadline impractical, he wrote, and alternative location options were being examined.¹⁶²

MR. SPECTOR'S INTERVENTION

Norman Spector was Prime Minister Mulroney's chief of staff from September 1, 1990, until February 15, 1992. One of the first issues Mr. Mulroney discussed with Mr. Spector after he took up this position was the Bear Head Project. When questioned by Commission counsel Nancy Brooks about a meeting he had with Mr. Mulroney during the first month or two of this appointment, Mr. Spector said that he left with the understanding that the prime minister wanted to get the Bear Head Project done. Mr. Mulroney was frustrated, he said, and "could not understand why it was not going ahead."¹⁶³ Mr. Mulroney suggested that it was being blocked by officials at the Department of National Defence. Mr. Spector said he thought his "job was to get this project done quickly." This meeting was the only time during Mr. Spector's tenure as chief of staff that Mr. Mulroney provided him with such a task. He said that Mr. Mulroney was under the impression that the project would come at no cost to Canadian taxpayers.

Subsequent to his meeting with Mr. Mulroney, Mr. Spector met with a number of government officials, including Mr. Fowler. Mr. Fowler advised him of the reasons why the Department of National Defence was opposed to the project. Mr. Spector then met with Mr. MacKay, Mr. McKnight, and their respective officials. At that meeting,

Mr. Spector requested that a joint document be prepared detailing the requirements for advancing the Bear Head Project. He wanted this document because, in his view, Mr. Mulroney was receiving contradictory information through private channels. Mr. Spector wanted to ensure that there was a commonly agreed-to document in order to put an end to the “backstabbing and gossip that was apparent on this file.”¹⁶⁴

The document requested by Mr. Spector was prepared by ACOA with input from the Departments of National Defence, External Affairs, and Industry, Science and Technology. It was presented to Mr. Spector by Mr. Tellier on December 10, 1990.¹⁶⁵ Mr. Tellier included a covering note, which indicated that Thyssen was seeking a directed contract for 250 Fox military vehicles, at a cost of \$290 million. The covering note also outlined the positions of ACOA and the Department of National Defence on Thyssen’s proposal. As in the past, ACOA was strongly supportive, “on the basis of anticipated regional benefits” associated with the proposal.¹⁶⁶ The Department of National Defence opposed the project because the costs of going forward would be “\$765 million over and above the \$290 million already budgeted.”¹⁶⁷

Mr. Spector testified that, after receiving this joint document, he briefed Mr. Mulroney on December 16, 1990. The briefing took place in a car, when they were travelling to Buckingham, Quebec, in the Gatineau area, where Mr. Mulroney had a speaking engagement. During that trip, Mr. Spector informed Mr. Mulroney that the Bear Head proposal could be accomplished only at a cost to taxpayers. Mr. Spector testified that he was sure he mentioned to Mr. Mulroney the actual figures from the joint document, despite the statement he later provided to the RCMP that referred to “several hundred millions of dollars.”¹⁶⁸ According to Mr. Spector, he also informed Mr. Mulroney that “the annual expenditures would have to be booked in the fiscal framework” in which they were incurred. Mr. Mulroney seemed to be “genuinely surprised” by this information. He responded by saying to Mr. Spector, “Well, if that’s the case, the project is dead.”

Mr. Spector testified that he informed Mr. Tellier and Mr. Fowler of his conversation with Mr. Mulroney. He said he did so because he thought it would be helpful for them to understand that the project no longer had the backing of the prime minister. He did not, however, think it appropriate for him to relate the substance of his discussion with Mr. Mulroney to Thyssen. Nor did he inform ACOA about it.

After Mr. Spector briefed Mr. Tellier and Mr. Fowler on his discussion with Mr. Mulroney, he had no further involvement with the Bear Head Project. He thought that “nature would take its course.”¹⁶⁹ Although the project was supported by ACOA, Mr. Spector believed it was “opposed by virtually everyone in town, so I figured that this was no longer an active file for me.”¹⁷⁰ He learned only much later, in 2001, that, in fact, the project had not died, as “Mr. [Hugh] Segal [who took over as chief of staff after Mr. Spector left] had dealt with the project at some point.”¹⁷¹

Mr. Mulroney testified that he had Mr. Spector evaluate the Bear Head Project after he became his chief of staff. He selected Mr. Spector for this task because he believed that he (Mr. Spector) could take a fresh look at the project and analyze it in the face of all the changes associated with it. Mr. Mulroney testified that, when Mr. Spector briefed him on his findings, he informed him that the project would “cost a minimum of \$100 million more than had been forecast.”¹⁷² Mr. Mulroney stated that he said in response, “Well, Norman, in that case this project is dead.”

MEMORANDUM OF UNDERSTANDING, APRIL 9, 1991

Having reached a roadblock in the formulation of the Bear Head proposal that had been considered in the joint memorandum commissioned by Mr. Spector, Bear Head Industries modified its proposal once again. In 1991 the company proffered a revised memorandum of understanding, to be signed by Karlheinz Schreiber on behalf of Bear Head Industries, by the minister responsible for ACOA, and by the minister of national defence. The MOU, dated April 9, 1991, included a provision that the Department of National Defence should place a directed start-up order with Bear Head Industries for 250 multi-role combat vehicles for the MRCV program, at an estimated cost of \$350 million.¹⁷³ This particular term represented an evolution from the 1990 MOU, in both vehicle type and price.¹⁷⁴ The MOU was signed by Mr. MacKay, as the minister responsible for ACOA, and by Mr. Schreiber on behalf of Bear Head Industries. As with the MOU in November 1990, the minister of national defence (still Mr. McKnight) did not sign the document.¹⁷⁵

Although Mr. MacKay signed the MOU, he testified that he did not recall being provided with any authority to do so. Nor did he recall offering this memorandum to Mr. McKnight for his perusal or signature.

MEETING OF APRIL 10, 1991

On April 10, 1991, Mr. Schreiber and Mr. Doucet met with Mr. Mulroney in the prime minister's office. Mr. Mulroney testified that, like all the other meetings he had with Mr. Schreiber, this one also came about at the request of either Mr. Doucet or Mr. MacKay.

Mr. Mulroney explained that he had a “unique” relationship with both Mr. Doucet and Mr. MacKay. He described Mr. MacKay as “a tremendous friend” who had “gone to the well” for him politically, and he had enjoyed a 50-year friendship with Mr. Doucet.¹⁷⁶ He said he knew that Mr. Doucet was representing Mr. Schreiber.

Mr. Mulroney stated that he was able to give both Mr. Doucet and Mr. MacKay “access,” in the sense of ensuring that projects they were interested in would be looked at by the appropriate officials. Mr. Mulroney noted that he never interfered with his ministers' departments. While Mr. Mulroney was on the witness stand before

me, I was struck by his assertion, made in a very pointed way, that Mr. Schreiber had no access to him; he said he met with Mr. Schreiber only because of his (Mr. Schreiber's) association with Mr. MacKay and Mr. Doucet, who were both involved in the Bear Head Project.¹⁷⁷

Mr. Mulroney explained that Mr. MacKay had told him that the Bear Head Project had changed in nature and was not "getting a fair shake from the federal bureaucracy."¹⁷⁸ Mr. Mulroney requested that Mr. Tellier join the meeting, and he asked him to evaluate the revised Bear Head proposal.

Mr. Tellier testified that, while in his office on April 10, 1991, he received a message that the prime minister wanted him to come downstairs for a few minutes. When he entered the prime minister's office, which was immediately below his office, one floor down, he observed Mr. Schreiber and Mr. Doucet sitting in front of Mr. Mulroney's desk. According to Mr. Tellier, when Mr. Mulroney asked him for a status report on "Thyssen," he replied that the file was still under consideration. In his recollection, the meeting lasted 30 minutes. In contrast to an earlier description of this meeting by Mr. Schreiber to lawyer and legal historian William Kaplan, on November 11, 1998, Mr. Tellier did not recall that Mr. Mulroney was there for only part of the meeting and that he was then left alone with Mr. Schreiber and Mr. Doucet. In his notes of this interview, Mr. Kaplan wrote the following, citing Mr. Schreiber as the source:

Anyway, there was this meeting. I was there with Doucet. Mulroney attended the first part of the meeting and then left. So it was just the three of us. Me, Tellier, and Fred Doucet. I heard about what Mulroney had already said in Cabinet, namely, that we are going to do something for Nova Scotia. This is on the record. You can see the documents for yourself. Anyway, before he left Mulroney says at this meeting "I want this thing to happen". Then he leaves. Tellier then comes out with all of these strange statements. These really weird remarks about the power of the bureaucracy. I said to him, "Paul, this is a strange situation, all of these people who got their jobs from the Liberals, opposing the present government's wish to have something done on this project". I said a lot of these people are now licking Tory asses. I went on and said that these people are horrible opportunists. That they were miserable creatures. Anyway, we leave the meeting and I thought that it was really strange the way Tellier had made these remarks which were seemingly contradictory to what Mulroney had said when he said he wanted something for the people of Nova Scotia.¹⁷⁹

In his evidence before me, Mr. Schreiber confirmed the accuracy of the first part of Mr. Kaplan's notes, up to the quotation, "I want this thing to happen."¹⁸⁰

Mr. Schreiber was upset with the bureaucracy's attitude to the Bear Head proposal. He wrote a letter to Mr. Mulroney on April 19, 1991, in which he said there were a "few items" following up on "our meeting of last week."¹⁸¹ Mr. Schreiber noted that he would not comment on the continuing meeting he had with Mr. Tellier, saying that he was confident that Mr. Doucet would do that. However, Mr. Schreiber informed

Mr. Mulroney that Mr. Tellier's opinion that the Department of National Defence could purchase the appropriate multi-role combat vehicles for \$500,000 was "nonsense."

Mr. Schreiber went on to state that Mr. Hartt had shown him a report from Paul Tellier indicating that Mr. McKnight opposed the Thyssen project. Mr. Hartt was the prime minister's chief of staff from 1989 until 1990, when Mr. Spector took over. Mr. Schreiber denied the accuracy of this report: he stated that Mr. MacKay was a witness to the fact that Mr. McKnight had told Mr. Schreiber several times that "he would love to go for the project but that he unfortunately had insufficient funding in his department."¹⁸² In the same letter, Mr. Schreiber referred to a conversation he had with Mr. Mulroney about Mr. Fowler's remark that "we 'are not going to get this project' and the equally unbelievable remarks of Lt. General [David] Huddleston [deputy chief of defence staff, Department of National Defence]."¹⁸³

I pause here to note that Mr. Mulroney stated that he had no recollection of ever seeing a number of letters Mr. Schreiber sent to him, including the letter of April 19, 1991. On May 7, 1991, Mr. Schreiber wrote to Mr. Tellier to complain about the lack of progress following the meeting of April 10, 1991. He also pointed out that Mr. Tellier was expected to bring his "personal leadership to the file and chair a meeting" to be scheduled between the government and Bear Head Industries.¹⁸⁴ In his testimony, Mr. Tellier stated that, when he reviewed this letter, he identified several inaccurate statements and noted these errors by hand on the letter.¹⁸⁵

Following the meeting held on April 10, 1991, Mr. Doucet wrote a letter to Mr. Tellier on April 12, 1991, in which he enclosed "a brief review of the project prepared by Bear Head Industries."¹⁸⁶ The review outlined a proposal made by Bear Head Industries: it included a provision requiring the Department of National Defence to place an order for 250 TH 495 vehicles for the multi-role combat vehicle program.

MEETING OF MAY 8, 1991

On May 8, 1991, Mr. Tellier met again with Mr. Schreiber and Mr. Doucet. Mr. Tellier testified that the meeting was arranged at Mr. Doucet's request. According to Mr. Tellier, Mr. Schreiber complained during the course of the meeting about the lack of progress on the file, indicating there were misunderstandings surrounding it, and asked him to intervene. Mr. Tellier stated that he felt it was the responsibility of the Department of National Defence to take the lead on the file.

Either Mr. Schreiber or Mr. Doucet responded that Mr. Tellier did not understand his instructions and that the prime minister would hear about it. Mr. Tellier testified, understandably I thought, that he found this comment to be offensive. He indicated to Mr. Schreiber and Mr. Doucet that he would inform the prime minister himself. He said in his testimony that there was "no big debate" at the meeting and that it had served its purpose.¹⁸⁷ The meeting ended with Mr. Tellier escorting Mr. Doucet and Mr. Schreiber to the door.

Subsequent to the meeting, Mr. Tellier telephoned Mr. Mulroney and informed him that Mr. Doucet and Mr. Schreiber had just left his office and that they were “not very pleased with the outcome.”¹⁸⁸ Mr. Tellier also indicated that they felt he was not following the prime minister’s directions. According to Mr. Tellier, Mr. Mulroney thanked him for the call, and they moved on to discuss other matters.

Mr. Mulroney testified that he received a call from Mr. Tellier following a meeting Mr. Tellier had with Mr. Schreiber. During the phone call, Mr. Tellier explained that he had just had an unpleasant meeting with Mr. Schreiber and some of his people. In response to a suggestion from Mr. Wolson, Commission counsel, that this conversation with Mr. Tellier “had the effect of putting up a caution flag” that Mr. Schreiber was not what he seemed, Mr. Mulroney said, “I think you are right.”¹⁸⁹

SECOND SOLE-SOURCE CONTRACT TO GMDD

On April 7, 1992, the government announced that GMDD had been “selected to produce up to 229 light armoured vehicles.”¹⁹⁰ The LAV, enhanced for the reconnaissance role, was “to replace the [Canadian Forces’] aging fleet.”¹⁹¹ The government also announced its decision to cancel the multi-role combat vehicle program. The reasons given for this cancellation were twofold: its projected costs of \$2.8 billion, and the government’s decision to reduce the deficit.

According to Mr. Schreiber, he and others were frustrated by the government’s decision to award GMDD a sole-source contract. He stated that they had obtained a legal opinion on the matter, and that he was ready to proceed with a lawsuit against the Government of Canada. Mr. Schreiber explained that the lawsuit did not proceed because of concerns that Thyssen had about maintaining good business relations with GM. The legal opinion referred to by Mr. Schreiber is dated April 13, 1993, and was provided by Ian Scott of Gowling, Strathy & Henderson.¹⁹²

Fourth Bear Head Proposal

Once the proposal to move the Bear Head Project to the Nova Scotia mainland had floundered, it was reconfigured yet again. In 1992 Bear Head Industries proposed that a plant be established in the east end of Montreal – and the details of the suggested plan soon took a number of different guises.

On April 2, 1992, Mr. Tellier forwarded a memorandum to Mr. Mulroney. In it he advised Mr. Mulroney that Thyssen had “suggested that the purchase of the light armoured vehicles be tendered competitively,” and that Thyssen had indicated it “would enter the competition with a proposal to build a manufacturing plant in east-end Montreal.”¹⁹³ In the same memorandum, Mr. Tellier advised Mr. Mulroney that the PCO did not believe that the Thyssen proposal “merits serious consideration” – and he proceeded to advance eight reasons to support that view.

Mr. Schreiber stated that the proposal to move the Bear Head Project to Quebec resulted from a recommendation made by Mr. Mulroney. He suggested that Mr. Mulroney made this recommendation because there were more votes in Montreal than in Hawkesbury, Nova Scotia. When he was questioned about this assertion, however, Mr. Mulroney categorically denied encouraging Mr. Schreiber or Thyssen to make approaches to the Province of Quebec to move the Bear Head Project from Nova Scotia to Quebec.

BEAR HEAD RESEARCH AND DEVELOPMENT PROPOSAL FOR MONTREAL

In May 1992, after Thyssen proposed moving the Bear Head Project to Montreal, Mr. Schreiber met with and wrote to a number of federal officials. His efforts included a meeting with Mr. Mulroney and Mr. MacKay on May 5, 1992.³⁴ By this time, Mr. MacKay was no longer the minister responsible for ACOA but was still the minister of public works. Mr. Schreiber wrote three letters in quick succession to Mr. Mulroney, on May 6, 13, and 22, 1992. In these letters, he alluded to having Mr. Mulroney's support; and, in the May 22 letter, he referred to the Bear Head Project as "our project."³⁵ On May 13, 1992, Mr. Schreiber also wrote to Marcel Masse, who was both the minister of national defence and a member of parliament from Quebec. In his letters, Mr. Schreiber provided details not only of the actions he had taken to move the project ahead but also of the political support that was available.³⁶

In a memorandum to Mr. Mulroney dated June 24, 1992, Mr. Teller described a new proposal by Bear Head Industries which called for "a directed contract from the Government to build eight prototype 'peace keeping' vehicles."³⁷ He went on to say that Thyssen would construct a research and development facility, in "presumably the east end of Montreal." He also said that the proposal assumed that the Department of National Defence would receive \$132 million in financial support from another department for the contract, and that Thyssen expected the DND "to test and evaluate the prototype vehicle."

In his testimony, Mr. Alford agreed that the Bear Head proposal at this stage was an offer to the Department of National Defence to participate jointly in perfecting a vehicle that met NATO specifications for the multi-purpose base armoured vehicle (MBAV).

The revised Bear Head proposal was promptly considered and rejected by Defence officials. They expressed concern about both the funding for the project and their being expected to act as salespeople for a product the department would not itself acquire.³⁸

Mr. Alford also confirmed that he attended a meeting with Defence officials, including Mr. Fowler, where the Bear Head research and development project was discussed. He agreed that the Department of National Defence clearly stated "that

they wanted nothing to do with it.”¹⁹⁹ As an alternative, it was suggested that Bear Head Industries should approach the Department of Industry, Science and Technology rather than the Department of National Defence.²⁰⁰ This idea was repeated in a letter of July 28, 1992, from Hugh Segal, Mr. Mulroney’s chief of staff at the time, to Mr. Schreiber. Mr. Segal wrote that Bear Head Industries should explore the possibility that the proposal might be supported as an industrial development project.²⁰¹

RESEARCH AND DEVELOPMENT PROPOSAL / MANUFACTURING PROPOSAL

In the summer or early fall of 1992, Bear Head Industries submitted a slightly modified proposal to Mr. Bouchard, the minister responsible for the Federal Office of Regional Development – Quebec (FORD-Q).²⁰² Thyssen’s proposal consisted of two phases. Phase one contemplated that four variants of the Thyssen TH 495 multi-purpose base armoured vehicle be developed. Thyssen would provide \$13 million in cash, and existing technology, valued at \$40 million, would be transferred from Germany. Thyssen was seeking an interest-free, forgivable loan of \$117 million from the federal government, and the provincial government was to provide a development facility at no cost to Thyssen.

As part of phase two, Thyssen would provide \$12 million in cash and establish a manufacturing facility in Quebec. The company required a further interest-free forgivable loan of \$56 million from the federal government, and the provincial government was to provide a production facility at no cost to Thyssen. The proposal asked the Department of National Defence to consider supporting the project “through testing programs and assignment of engineering resources.”²⁰³

Additional information about the status of the Bear Head Project at this time is available in a letter dated September 25, 1992, from Mr. Bouchard to Mr. Schreiber. In this letter, Mr. Bouchard notes that Mr. Schreiber had informed FORD-Q that Bear Head had “identified export market opportunities in the field of light armoured vehicles for peacekeeping missions,” and that it intended to use Canada as a base of operation “to develop activities in an extensive range of heavy industrial technologies.”²⁰⁴

In the fall of 1992 an interdepartmental working group led by the Department of Industry, Science and Technology was charged by the PCO with carrying out an assessment of the market projections made by Bear Head Industries.²⁰⁵ This group recommended that the company’s proposal not be supported “because the market projections were not substantiated, DND had no requirement for the vehicle[,] and Canada already [had] a competitive vehicle manufacturer in DDGM.”²⁰⁶

Mr. Mulroney left office as prime minister on June 24, 1993. At the Progressive Conservative Party leadership convention earlier that month, on June 13, Kim Campbell had been elected as party leader, and she succeeded Mr. Mulroney as prime minister on June 25, 1993. In her testimony before the Commission, Ms. Campbell said

Mr. Mulroney never approached her directly to ask her if she would give consideration to the establishment of a light armoured vehicle plant in Nova Scotia, the east end of Montreal, or anywhere else in Canada. She said that Mr. Mulroney never approached her while she was prime minister about the Bear Head Project or any other project. She said she was also quite sure that Mr. Mulroney had not made any indirect approach to her through her staff. She knew who Fred Doucet was, but he was not someone she knew. She did not have any meetings with Mr. Doucet.

In August and September 1993 Bear Head Industries again approached the government with a proposal “to establish a facility to manufacture tracked light military vehicles,” either in the east end of Montreal or elsewhere in Canada.²⁰⁷ This proposal suggested that the Department of National Defence test and evaluate “two existing TH 495 tracked vehicle prototypes in Canada”; that a prototype be designed, developed, and built in an existing facility in Canada; and that, if government assistance were provided and markets were encouraging, “production of the family of TH 495 vehicles in Canada for export markets” would commence.

On August 26, 1993, Mr. Schreiber and Mr. Doucet, together with Jean Corbeil, the minister of transport, and Jean Charest, the minister of industry, science and technology and also the minister responsible for FORD-Q, attended a meeting to discuss the latest proposal by Bear Head Industries.²⁰⁸ Parenthetically, I note that this meeting occurred one day before Mr. Schreiber made his first payment, at a hotel at Mirabel Airport, to Mr. Mulroney.

Commission counsel interviewed Mr. Charest, and the transcript of that interview was made an exhibit at the Inquiry.²⁰⁹ During the interview, Mr. Charest was asked whether he recalled being asked by either Mr. Mulroney or Ms. Campbell to participate in the Bear Head file or to meet with any of the parties promoting the Bear Head file. He said he did not recall either of them raising the issue with him. He said that, had the issue been raised by either of the prime ministers, there was a good chance he would remember it.

Having assessed all the evidence on the point carefully, I am of the opinion that Mr. Mulroney did not apply pressure to or attempt to influence Prime Minister Campbell, his ministers, or other government officials with respect to the promotion or approval of the Bear Head Project.

As a result of the August 26 meeting, the government took three steps in relation to this fourth Bear Head proposal. First, “DND was contacted to determine the nature of commitments made by the former Minister of National Defence, M. Masse, to test and certify the Thyssen vehicle.” Second, “NATO’s plans for a peace keeping vehicle and its specifications [were] ... re-visited.” And third, “in conjunction with External Affairs, global market statistics as applicable to the Thyssen vehicle [were] ... re-examined.”²¹⁰

Protracted discussions followed between Bear Head Industries and the Government of Canada and involved various individuals. The negotiations began toward the

end of the Campbell government's term in office and continued after the Liberals, under Prime Minister Jean Chrétien, took over on November 4, 1993. Most of these discussions concerned international market projections, supplied by Bear Head Industries, and government analyses of those projections. During the negotiations, the participants shared information as they tried to determine the size of the potential market for the TH 495 tracked vehicle.²¹¹ Forecasts for several countries, including the United States, the United Kingdom, and France, were provided during this process.²¹² Bear Head Industries also indicated that there was "market potential" for the replacement of light tracked vehicle types being used by certain countries, including the USSR and China.²¹³

On December 15, 1993, Mr. Swain, the deputy minister of industry, science and technology, sent a memorandum to his minister in the recently elected Liberal government, John Manley.²¹⁴ Mr. Swain reported that, in "early September 1993, government officials were instructed to re-open" the Bear Head file on the basis that "DND officials would commence negotiations of a potential service contract with the company for a test and evaluation program for two prototype vehicles, provided that it was on a full cost recovery basis." Also, it was decided that "Industry Canada would lead an interdepartmental team (DND, FORD-Q, and DFAIT [Department of Foreign Affairs and International Trade, formerly External Affairs]) to examine the company's most recent proposal with an initial focus on market aspects."²¹⁵ I note that Mr. Swain's memorandum indicates that the discussions referred to were initiated, then "suspended pending direction from the new government."

Mr. Swain concluded with a recommendation that Mr. Manley be "non-committal" to the proposal. In a handwritten addendum to the memorandum, he offered a blunt assessment of this latest Thyssen proposal. He observed that the Thyssen "folly" had been "encouraged by far too many Ministers, each of whom was willing to subsidize production in some desperate place at the expense of London."²¹⁶ (I note here that London, Ontario, was the home of GMDD.)²¹⁷ Mr. Swain went on to say that the Canadian Forces "do not need their hardware" and that Canada "hardly needs a second exporter."²¹⁸

When the political landscape in Canada changed dramatically after the election of a Liberal government, Mr. Schreiber, a politically astute man, undoubtedly recognized the need to have someone with connections to ministers in that government working on behalf of and promoting Bear Head Industries. He retained Marc Lalonde to perform those services. Mr. Lalonde, a well-respected lawyer in Montreal, had held various portfolios as a minister in previous Liberal governments. He first became involved in promoting the Bear Head proposal at the end of October 1993, after the Liberals won the federal election.

Mr. Lalonde testified that he knew Mr. Schreiber before October 1993 because he (Mr. Schreiber) had consulted him as a lawyer on other business. He said he had

heard about the Bear Head Project from Mr. Schreiber before he was retained to promote it to the Liberal government. He also explained that he recommended that Mr. Schreiber retain Ian Scott in connection with a lawsuit being contemplated against the federal government.

According to Mr. Lalonde, when he agreed to take on the Bear Head mandate, he advised Mr. Schreiber that Bear Head Industries needed to convince the Liberal government to move forward with a public tender process. A sole-source contract for the company was out of the question, he said. It was also Mr. Lalonde's view that Bear Head Industries needed to establish the existence of a market beyond the one in Canada, and to demonstrate that its product was superior to that being offered by its competitors. Mr. Lalonde said he suggested various site locations for the establishment of a plant in Quebec, met with individuals from Bear Head Industries, and lobbied the federal government on behalf of the company.

THE END OF BEAR HEAD

The Department of National Defence published a White Paper on December 1, 1994, which included a section outlining the Canadian Armed Forces' need for new armoured personnel carriers.²¹⁹ Following this announcement, Bear Head Industries yet again contacted the government, this time, first, expressing a desire for a competitive bidding process for this program, and, second, promoting its product for the new program.²²⁰ Although concentrated lobbying activities on behalf of Bear Head Industries followed, they were ultimately unsuccessful. On August 16, 1995, the Department of National Defence announced in a news release that the government had decided to proceed immediately with the acquisition of new armoured personnel carriers for the Canadian Forces and, subject to the successful completion of contract negotiations, the procurement would be awarded to GMDD.²²¹

Mr. Lalonde's mandate concluded in August 1995, when, he said, "the government reached its decision."²²² Mr. Lalonde testified that he sent one last letter to Prime Minister Chrétien expressing his "surprise and disappointment" with the government's decision.

On September 26, 1996, Bear Head Industries filed articles of dissolution.²²³ This action effectively drew to a close what had been a relentless but ultimately fruitless journey by Mr. Schreiber and his associates to gain acceptance by Canadian government officials for Thyssen's armoured vehicles, in one form of investment or another (see Table 4-1).

TABLE 4-1: CHRONOLOGY OF THE FOUR BEAR HEAD PROPOSALS

1984
<i>September 4</i>
<ul style="list-style-type: none"> • Federal election: Progressive Conservative government elected; Brian Mulroney becomes prime minister.
1985
<i>May–July</i>
<ul style="list-style-type: none"> • Federal government announces major investment program to stimulate Cape Breton economy. • Thyssen submits first proposal – for export-oriented, heavy-duty plant located on Bear Head Peninsula in Cape Breton, Nova Scotia, to manufacture military vehicles. Thyssen requests permits for export of military vehicles to certain Middle Eastern countries. • Karlheinz Schreiber becomes involved in proposed project.
<i>October</i>
<ul style="list-style-type: none"> • Schreiber negotiates consultancy agreement with Thyssen. • Thyssen agrees to pay International Aircraft Leasing Limited (IAL) \$4 million in “success fees” if contract signed to construct Bear Head plant.
<i>October 31</i>
<ul style="list-style-type: none"> • Bitucan (Schreiber’s company) becomes Thyssen’s authorized agent for transactions involving military products in Canada.
<i>November</i>
<ul style="list-style-type: none"> • Schreiber incorporates Bear Head Industries Limited (Bear Head Industries) on behalf of Thyssen and becomes its chairman.
1986
<i>February 14</i>
<ul style="list-style-type: none"> • <i>Globe and Mail</i> describes alleged conflict in the federal cabinet over Bear Head Project, because proposal calls for exports to the Middle East. Thyssen subsequently withdraws first Bear Head proposal.
1987
<i>June 6</i>
<ul style="list-style-type: none"> • Atlantic Canada Opportunities Agency (ACOA) established and immediately becomes a proponent of the Bear Head Project.
<i>September</i>
<ul style="list-style-type: none"> • Thyssen presents second Bear Head proposal, focusing on North American market for armoured vehicles.
<i>October 30</i>
<ul style="list-style-type: none"> • Bear Head Industries and Province of Nova Scotia enter conditional agreement giving Bear Head Industries option to purchase Bear Head Peninsula with interest-free loan from the province. Loan will be deemed repaid once 300 jobs created and maintained for a period of three years.

TABLE 4-1: CHRONOLOGY OF THE FOUR BEAR HEAD PROPOSALS (CONTINUED)

1987
<i>December</i>
<ul style="list-style-type: none"> • October agreement triggers commission payment of \$1.9 million from Thyssen to IAL – and then to Schreiber. This payment constitutes a portion of the \$4 million in success fees that Thyssen agreed to pay IAL.
1988
<i>September</i>
<ul style="list-style-type: none"> • Based on light armoured vehicle (LAV) procurement program for Department of National Defence (DND), the Government of Canada and Bear Head Industries sign an understanding in principle (UIP) in relation to second Bear Head proposal.
<i>October–December</i>
<ul style="list-style-type: none"> • UIP triggers commission payment of \$2 million from Thyssen to IAL. Series of invoices totalling \$610,000 submitted to Bitucan and cheques paid to consultants, including Fred Doucet. Schreiber says payments originated from the UIP commission and represented success fees for work performed on behalf of Bear Head Industries.
<i>November 21</i>
<ul style="list-style-type: none"> • Federal election: Progressive Conservative government headed by Brian Mulroney re-elected.
1989
<i>April–September</i>
<ul style="list-style-type: none"> • April federal budget terminates the LAV procurement program. Contract for 200 wheeled vehicles for reserve forces subsequently awarded to General Motors Diesel Division (GMDD) of London, Ontario.
1990
<i>January 25</i>
<ul style="list-style-type: none"> • Minister of National Defence William McKnight writes letter to Schreiber stating that Bear Head Industries will have opportunity to tender for contract for multi-role combat vehicle (MRCV) if Canadian Forces decide to acquire one.
<i>February 5</i>
<ul style="list-style-type: none"> • Government officials inform Thyssen representatives that Canada has no immediate plans to purchase tanks or LAVs.
<i>November</i>
<ul style="list-style-type: none"> • Memorandum of understanding (MOU): Bear Head Industries to construct a plant, and DND to sole-source an order to it. Schreiber signs on behalf of Bear Head Industries, and Elmer MacKay signs as the minister responsible for ACOA; McKnight does not sign for DND. • Third Bear Head proposal: Schreiber says, because Cape Breton Tax Credit no longer available, proposed location for Bear Head Project has been moved to mainland of Nova Scotia.

TABLE 4-1: CHRONOLOGY OF THE FOUR BEAR HEAD PROPOSALS (CONTINUED)

1990
<i>December 10–16</i>
<ul style="list-style-type: none"> At Mulroney's request, Norman Spector, chief of staff, produces joint document prepared by DND and ACOA showing that costs for Bear Head Project will be more than \$700 million over what was budgeted. Mulroney subsequently informs Spector that the "project is dead."
1991
<i>April 9</i>
<ul style="list-style-type: none"> Bear Head Industries offers revised MOU: DND to place directed start-up order with it for 250 MRCVs. Schreiber signs for the company, and MacKay for ACOA, but McKnight does not sign for DND.
<i>April–May</i>
<ul style="list-style-type: none"> Mulroney directs Paul Tellier, clerk of the privy council, to evaluate revised Bear Head proposal. Schreiber meets with Tellier and complains about lack of progress on file.
1992
<i>April–May</i>
<ul style="list-style-type: none"> Federal government announces sole-source contract to GMDD to produce up to 229 LAVs and that MRCV program cancelled. Fourth Bear Head proposal: to establish a research and development facility for LAVs and, subsequently, a manufacturing facility in the east end of Montreal.
1993
<i>August–September</i>
<ul style="list-style-type: none"> Variation of fourth Bear Head proposal is submitted to government for production of TH 495 family of Thyssen vehicles in Canada for export markets.
<i>October 25</i>
<ul style="list-style-type: none"> Federal election: Liberal government elected; Jean Chrétien becomes prime minister.
1994
<i>December 1</i>
<ul style="list-style-type: none"> DND White Paper outlines defence priorities, including need for new armoured personnel carriers for Canadian Armed Forces. Bear Head Industries subsequently expresses desire that its products be considered.
1995
<i>August 16</i>
<ul style="list-style-type: none"> DND announces that sole-source contract for armoured personnel carriers will be awarded to GMDD.
1996
<i>September 26</i>
<ul style="list-style-type: none"> Bear Head Industries files articles of dissolution.

NOTES

- 1 Canada, *Second Report of the Independent Advisor into the Allegations Respecting Financial Dealings Between Mr. Karlheinz Schreiber and the Right Honourable Brian Mulroney* (Ottawa: Minister of Public Works and Government Services, 2008), available online at <http://www.pco-bcp.gc.ca/docs/information/publications/jr-rj/report-rapport-eng.pdf>, p. 7.
- 2 Exhibit P-8, p. 2; Exhibit P-39, tab 2.
- 3 Exhibit P-39, tab 2.
- 4 Ibid.
- 5 Exhibit P-7(1), tab 2.
- 6 Exhibit P-39, tab 4, Annex C.
- 7 Exhibit P-7(1), tab 2; Exhibit P-39, tab 4, Annex C.
- 8 Exhibit P-39, tab 4.
- 9 Exhibit P-7 (1), tab 2.
- 10 Exhibit P-39, tab 2.
- 11 Ibid.
- 12 Testimony of Mr. Paul Tellier, Transcript, May 5, 2009, p. 3029.
- 13 Exhibit P-39, tab 3.
- 14 Exhibit P-39, tab 5.
- 15 Testimony of Mr. Harry Swain, Transcript, April 21, 2009, p. 1628.
- 16 Exhibit P-39, tab 3.
- 17 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3444–45.
- 18 Exhibit P-39, tab 3.
- 19 Exhibit P-39, tab 2.
- 20 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3456.
- 21 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 298.
- 22 Exhibit P-7(1), tab 3; Exhibit P-7(1), tab 4.
- 23 Exhibit P-7(1), tab 3.
- 24 Ibid.; see also Exhibit P-7(1), tab 14.
- 25 Exhibit P-7(1), tab 4.
- 26 Exhibit P-7(1), tab 5.
- 27 Exhibit P-39, tab 4.
- 28 Exhibit P-21, tab 12.
- 29 Ibid.
- 30 Ibid.
- 31 Exhibit P-39, tab 10.
- 32 Exhibit P-38, tab 6.
- 33 Exhibit P-7(1), tab 14.
- 34 Exhibit P-7(1), tab 12.
- 35 Ibid.
- 36 Ibid.
- 37 Exhibit P-7(1), tabs 17, 18.
- 38 Exhibit P-7(1), tabs 16, 17.
- 39 Exhibit P-7(1), tab 16.
- 40 Exhibit P-7(1), tab 17.
- 41 Exhibit P-7(1), tab 18.
- 42 Exhibit P-7(1), tab 87.
- 43 Exhibit P-7(1), tab 39.
- 44 Exhibit P-7(1), tab 33.
- 45 Exhibit P-38, tab 22.
- 46 Exhibit P-7(1), tab 33.
- 47 Exhibit P-38, tab 22.
- 48 Ibid.
- 49 Exhibit P-38, tab 26.

- 50 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 304–08.
- 51 Exhibit P-38, tab 1.
- 52 Testimony of Senator Lowell Murray, Transcript, May 5, 2009, pp. 2926–27.
- 53 Exhibit P-38, tab 1.
- 54 Exhibit P-38, tab 8.
- 55 Exhibit P-38, tab 12.
- 56 Testimony of Senator Lowell Murray, Transcript, May 5, 2009, pp. 2960–62.
- 57 Exhibit P-38, tab 28.
- 58 Exhibit P-38, tabs 13, 26; Exhibit P-32, tab 19.
- 59 Exhibit P-38, tab 13A.
- 60 Exhibit P-38, tab 14A.
- 61 Ibid.
- 62 Exhibit P-38, tab 20.
- 63 Exhibit P-38, tab 28.
- 64 Exhibit P-38, tab 21.
- 65 Exhibit P-32, tab 19.
- 66 Exhibit P-38, tab 27.
- 67 Exhibit P-38, tabs 27, 28; Exhibit P-32, tab 21.
- 68 Exhibit P-38, tab 20.
- 69 Exhibit P-32, tab 17; Exhibit P-38, tab 20.
- 70 Exhibit P-32, tab 17.
- 71 Exhibit P-32, tab 15A.
- 72 Exhibit P-38, tab 22.
- 73 Ibid.; tab 25; and tab 33.
- 74 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3475.
- 75 Testimony of Mr. Derek Burney, Transcript, March 31, 2009, p. 227.
- 76 Exhibit P-6, tabs 5, 6.
- 77 Exhibit P-38, tab 28.
- 78 Exhibit P-6, tab 7.
- 79 Ibid.
- 80 Testimony of Mr. Paul Tellier, Transcript, May 5, 2009, p. 3034.
- 81 Exhibit P-38, tab 16.
- 82 Exhibit P-39, tab 14.
- 83 Exhibit P-39, tab 13.
- 84 Testimony of Mr. Paul Tellier, Transcript, May 5, 2009, p. 3036.
- 85 Ibid., p. 3056.
- 86 Ibid., p. 3057.
- 87 Ibid., pp. 3057–58.
- 88 Ibid., p. 3057.
- 89 Exhibit P-29, tab 4.
- 90 Testimony of Mr. Karlheinz Schreiber, Transcript, April 17, 2009, p. 1070.
- 91 Testimony of Mr. Fred Doucet, Transcript, April 27, 2009, p. 2056.
- 92 Testimony of Mr. Fred Doucet, Transcript, April 28, 2009, p. 2412.
- 93 Testimony of Mr. Fred Doucet, Transcript, April 27, 2009, p. 2090.
- 94 Ibid., pp. 2042–43.
- 95 Ibid., p. 2086.
- 96 Exhibit P-38, tab 37.
- 97 Ibid.
- 98 Exhibit P-38, tab 44.
- 99 Exhibit P-38, tab 34.
- 100 Ibid.
- 101 Ibid.
- 102 Exhibit P-38, tab 33.
- 103 Exhibit P-38, tab 34.

- 104 Testimony of Mr. Derek Burney, Transcript, March 31, 2009, pp. 226–27.
- 105 Exhibit P-38, tabs 2, 8, 12.
- 106 Exhibit P-38, tab 12.
- 107 Exhibit P-7(1), tab 34; Exhibit P-7(3), tab 24.
- 108 Exhibit P-29, tab 8.
- 109 Ibid.
- 110 Ibid.
- 111 Exhibit P-7(1), tab 34; Exhibit P-7(3), tab 24.
- 112 Exhibit P-7(1), tab 36.
- 113 Testimony of Mr. Karlheinz Schreiber, Transcript, April 17, 2009, pp. 1078–79.
- 114 Ibid., pp. 1081–83.
- 115 Exhibit P-64.
- 116 Ibid.
- 117 Exhibit P-29, tab 4.
- 118 Exhibit P-55; Exhibit P-29, tab 4.
- 119 Exhibit P-55.
- 120 Exhibit P-29, tab 4. Although Mr. Kingsley specified subsection 42(b) in his letter, the correct reference is subsection 60(b).
- 121 Ibid.
- 122 Exhibit P-64.
- 123 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4569–71.
- 124 Exhibit P-55.
- 125 Ibid.
- 126 Ibid.
- 127 Ibid.
- 128 Testimony of Mr. Fred Doucet, Transcript, April 27, 2009, p. 2053.
- 129 Exhibit P-55.
- 130 Exhibit P-7(1), tab 33.
- 131 Exhibit P-7(1), tab 35.
- 132 Exhibit P-18, tab 4.
- 133 Exhibit P-18, tab 6.
- 134 Testimony of Mr. Greg Alford, Transcript, April 21, 2009, p. 1418.
- 135 Exhibit P-18, tab 7.
- 136 Exhibit P-7(1), tabs 43, 44.
- 137 Exhibit P-7(1), tab 44.
- 138 Exhibit P-18, tab 8.
- 139 Testimony of Mr. Greg Alford, Transcript, April 21, 2009, p. 1421.
- 140 Exhibit P-7(1), tab 45.
- 141 Exhibit P-7(1), tab 47.
- 142 Testimony of Mr. Greg Alford, Transcript, April 21, 2009, pp. 1422–24.
- 143 Exhibit P-7(1), tab 50.
- 144 Exhibit P-7(1), tab 49; Exhibit P-37, tabs 14, 15.
- 145 Exhibit P-7(1), tab 50.
- 146 Ibid.
- 147 Exhibit P-7(1), tab 51.
- 148 Testimony of Mr. Paul Tellier, Transcript, May 5, 2009, p. 3082.
- 149 Exhibit P-50, tab 3.
- 150 Exhibit P-50, tab 4.
- 151 Testimony of Mr. Brian Mulroney, May 14, 2009, p. 3955.
- 152 Ibid.
- 153 Exhibit P-50, tab 4.
- 154 Ibid.
- 155 Ibid.
- 156 Exhibit P-7(1), tab 59.

157 Exhibit P-37, tab 25A.
158 Exhibit P-37, tab 29A.
159 Ibid.
160 Ibid.
161 Exhibit P-7(1), tab 62.
162 Exhibit P-7(1), tab 74A.
163 Testimony of Mr. Norman Spector, Transcript, April 30, 2009, pp. 2588–89.
164 Ibid, p. 2594.
165 Exhibit P-33, tab 13.
166 Ibid.
167 Ibid.
168 Testimony of Mr. Norman Spector, Transcript, April 30, 2009, p. 2613.
169 Ibid., p. 2619.
170 Ibid.
171 Ibid., pp. 2638–39.
172 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3500.
173 Exhibit P-7(1), tab 66.
174 Ibid.; Exhibit P-37, tab 29A.
175 Exhibit P-7(1) tab 66.
176 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3503.
177 Ibid., pp. 3502–03.
178 Ibid., pp. 3505–06.
179 Exhibit P-25, tab 10.
180 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 534–35.
181 Exhibit P-7(1), tab 67A.
182 Ibid.
183 Ibid.
184 Exhibit P-7(1), tab 69.
185 Exhibit P-39, tab 35.
186 Exhibit P-39, tab 31.
187 Testimony of Mr. Paul Tellier, Transcript, May 5, 2009, pp. 3116–17.
188 Ibid., pp. 3117–18.
189 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 4026–27.
190 Exhibit P-7(1), tab 76.
191 Ibid.
192 Exhibit P-7(1), tab 91.
193 Exhibit P-43, tab 57.
194 Exhibit P-50, tab 8.
195 Exhibit P-7(4), tabs 9, 10, 11.
196 Exhibit P-7(1), tab 80; Exhibit P-7(4), tabs 9, 10, 11.
197 Exhibit P-7(1), tab 82.
198 Exhibit P-18, tab 13.
199 Testimony of Mr. Greg Alford, Transcript, April 21, 2009, p. 1433.
200 Exhibit P-18, tab 13.
201 Exhibit P-7(1), tab 83.
202 Exhibit P-21, tab 9.
203 Ibid.
204 Exhibit P-7(1), tab 85.
205 Exhibit P-21, tab 11.
206 Ibid.; Exhibit P-7(1), tab 94.
207 Exhibit P-21, tab 12.
208 Exhibit P-7(1), tab 94.
209 Exhibit P-56.
210 Exhibit P-7(1), tab 94.

- 211 Exhibit P-18, tabs 19, 21, 24, 27, 30, 31.
- 212 Exhibit P-18, tab 24.
- 213 Exhibit P-18, tab 32.
- 214 Exhibit P-21, tab 12.
- 215 Ibid.
- 216 Ibid.
- 217 Exhibit P-7(1), tab 76.
- 218 Exhibit P-21, tab 12.
- 219 Exhibit P-18, tab 35.
- 220 Exhibit P-18, tab 37.
- 221 Exhibit P-7(2), tab 111.
- 222 Testimony of Mr. Marc Lalonde, Transcript, March 30, 2009, pp. 117–18, [ENGLISH TRANSLATION], p. 114.
- 223 Exhibit P-7(2), tab 119.

The Relationship

The question from the Terms of Reference to be addressed in this chapter is Question 1:

1. *What were the business and financial dealings between Mr. Schreiber and Mr. Mulroney?*

Although in this chapter I deal with the relationship of the two men from its inception in the 1980s, the important period of time in terms of responding to Question 1 begins after June 1993 and ends in 1999. There are two distinct segments within that period: (1) from 1993, following Mr. Mulroney's resignation as prime minister, until September 29, 1995, when the letter of request (LOR) went from the Government of Canada to the Government of Switzerland; and (2) following the publication of the LOR in September 1995 until 1999. Although the business relationship ended in 1999, there was communication between Mr. Schreiber and Mr. Mulroney following 1999.

Mr. Mulroney and Mr. Schreiber had a relationship that spanned two decades. The details of many areas of their relationship are contentious, including when they first met, whether Mr. Schreiber provided financial support to any of Mr. Mulroney's political campaigns, the purpose and circumstances of meetings they had while Mr. Mulroney was prime minister, the nature and terms of their business agreement (covered in Chapter 6 of this Report), and the closeness of their relationship.

According to Mr. Schreiber, he supported Mr. Mulroney's rise to high government office and had many meetings with him starting in the early 1980s. Mr. Schreiber stated that they had the type of friendship where they could be straightforward with each other, exchanged correspondence and telephone calls, attended events together until 2000, and had considerable dealings thereafter.

According to Mr. Mulroney, he did not recall meeting Mr. Schreiber before 1986 or 1987 and met with him while prime minister only because of Mr. Schreiber's association with Mr. Doucet and Mr. MacKay. (Fred Doucet was a close friend and senior adviser of Mr. Mulroney; and Elmer MacKay held various ministerial portfolios throughout Mr. Mulroney's government.) Mr. Mulroney stated that he had only a peripheral relationship with Mr. Schreiber and, before Mr. Schreiber's arrest in August 1999, knew him only as an accomplished businessman who was highly recommended by "a number of people here in Ottawa and elsewhere, including Elmer MacKay and Fred Doucet."¹

First Meeting

Mr. Schreiber's Account

Mr. Schreiber testified that he met Mr. Mulroney at the Ritz-Carlton Hotel in Montreal in the early 1980s. At the time, Mr. Mulroney was president of the Iron Ore Company of Canada.² Mr. Schreiber stated that he was in the company of Frank Moores and Walter Wolf, an Austrian-Canadian businessman.³ During his interview with Commission counsel,⁴ Mr. Schreiber explained that he had been approached in Germany by Mr. Wolf in the late 1970s to support Canadian conservatives. Mr. Wolf introduced him to Mr. Moores, who at the time was president of the Progressive Conservative (PC) Party. Mr. Schreiber stated that he had met Mr. Mulroney soon after being introduced to Mr. Moores and that Mr. Moores subsequently asked him for funding, which was to be used for the 1983 leadership review in Winnipeg.

Mr. Schreiber testified that he met Mr. Mulroney a number of times before Mr. Mulroney became leader of the PC Party, the meetings generally taking place at the Ritz-Carlton Hotel in Montreal. According to Mr. Schreiber, the meetings had a political aspect, given that "the whole reason why I was brought there was the request for support for his [Mr. Mulroney's] political work."⁵

Mr. Schreiber has on various occasions expressed the long-standing nature of his relationship with Mr. Mulroney. On March 31, 2004, Mr. Schreiber told the lawyer and legal historian William Kaplan that he was introduced to Mr. Mulroney through Mr. Wolf and Michel Cogger (a former senator and an adviser to Mr. Wolf) at the "request of Mr. Strauss."⁶ On September 10, 2004, Mr. Schreiber testified at the preliminary inquiry in the case of *R. v. MBB Helicopter Canada* (Eurocopter

proceedings) that he first met Mr. Mulroney in the late 1970s and that he had up to three social meetings with him at the Ritz-Carlton in Montreal before Mr. Mulroney became prime minister.⁷

In 2007 Mr. Schreiber wrote two letters to Mr. Mulroney, in which he stated that they had been in contact since the late 1970s. One of these letters also states that he had supported Mr. Mulroney since then.⁸ According to his affidavit of November 7, 2007, Mr. Schreiber was first introduced to Mr. Mulroney by Mr. Moores in the early 1980s and had “several meetings” with Mr. Mulroney at the Ritz-Carlton before he became leader of the PC Party.⁹

Mr. Mulroney’s Account

Mr. Mulroney did not recall meeting Mr. Schreiber in the period before the leadership review in Winnipeg; however, he acknowledged that he was at the Ritz-Carlton regularly during this time. Given his political and business activities, Mr. Mulroney could not exclude the possibility that he might have run into Mr. Schreiber.¹⁰

Mr. Mulroney recalled meeting Mr. Schreiber in 1986 or 1987, when he began seeing Mr. Schreiber with Elmer MacKay.

During his examination before plea in April 1996, in his lawsuit against the Canadian government, Mr. Mulroney was asked by Claude-Armand Sheppard (counsel for the Attorney General of Canada and Kimberly Prost of the Department of Justice) to describe his relationship with Mr. Schreiber. Mr. Mulroney stated that they must have first met in the early 1980s.¹¹ In the course of the Commission’s hearings, Mr. Mulroney confirmed that the following statement from the examination accurately described his relationship with Mr. Schreiber up until 1985:

He ... it was a businessman from Germany who moved, apparently to Alberta, where he was involved in business, and I was introduced to him, I ... I believe, although I have no specific recollection of this, that it must have been in the beginning of the early eighties (80’s). He was a successful business person in Alberta, and I was president of the Iron Ore Company, and I would have been introduced to him in ... in, I believe, a business context. Although I did know that he was a very strong supporter of the Government, of Premier Peter Lougheed, whom I admired a great deal. That was my knowledge of him at the time.¹²

Mr. Mulroney was asked by Mr. Sheppard to give details on the circumstances in which they met. He answered:

I don’t remember in what connection because three (3) years later or ... three (3) years later at about that time, I ran for the leadership of the Conservative Party. I then became leader of the opposition and Prime Minister, all in rapid succession. And, as you know, you encounter all kinds of people in those activities. I cannot be more specific than that, although I certainly am sure that I met him in the years prior to nineteen eighty-four (1984).¹³

On January 9, 2002, Mr. Mulroney told Mr. Kaplan that he had been introduced to Mr. Schreiber by Mr. MacKay and Mr. Doucet.¹⁴ On December 4, 2002, he told Mr. Kaplan that he thought he had been introduced to Mr. Schreiber by Mr. MacKay.¹⁵

In February 1982 Mr. Mulroney sent a telegram to Mr. Schreiber congratulating him on becoming a Canadian citizen. The telegram was sent to Mr. Schreiber at the Ritz-Carlton in Montreal.¹⁶

Mr. Mulroney testified that he did not recall sending the telegram and stated that he must have been asked by Frank Moores, Robert Coates (the member of parliament for Cumberland-Colchester, Nova Scotia, and, at the time, chairman of the German Canada Parliamentary group), “or someone” to make this gesture. He noted that he would have been provided with a draft of the telegram. According to Mr. Mulroney, sending “letters of various kinds like this” would not have been unusual considering his involvement at the time: he was being named as a potential candidate for the leadership of the PC Party and was the president of the Iron Ore Company.¹⁷ According to Mr. Mulroney, he “may have been introduced to [Mr. Schreiber] at the Ritz or somewhere else in those days.”¹⁸

Leadership of the Progressive Conservative Party

LEADERSHIP REVIEW (WINNIPEG, 1983)

After the Progressive Conservative Party lost the election of 1980, the Right Honourable Joe Clark faced a mandatory review of his role as leader of the party. The review was ultimately scheduled to take place in January 1983, in Winnipeg.

In his testimony, Mr. Mulroney explained that, under the rules of the PC Party pertaining to its leadership, “50.1” percent of the votes was required to win the leadership or to retain it.¹⁹ Before the 1983 leadership review, Mr. Clark declared that he wanted to affirm his position as leader by obtaining 70 percent of the votes. Because Mr. Clark received only 68 percent of the vote, he decided to resign as leader of the party. Mr. Clark’s resignation led to a leadership race, with the new leader to be decided on June 11, 1983.

Mr. Schreiber’s Evidence

According to Mr. Schreiber, Mr. Moores (who was involved in organizing the leadership review in Winnipeg) asked Mr. Schreiber for funding to be used for the leadership review. Mr. Schreiber said that he was told that delegates were to be flown in from Quebec to Winnipeg to ensure that there would be sufficient votes against Joe Clark to trigger a new leadership vote.²⁰

Mr. Schreiber testified that he donated \$50,000 to Mr. Mulroney’s leadership campaign at the request of Mr. Wolf, through MLE Industries. Mr. Schreiber’s

Alberta-based company. Mr. Schreiber stated that Mr. Wolf was a fundraiser with “a great interest” and agreed that Mr. Moores was organizing Mr. Mulroney’s campaign.²⁰ Mr. Schreiber gave the money to Mr. Wolf’s lawyer, Michel Cogger. Mr. Schreiber had previously testified, during the Eurocopter proceedings, that he had donated \$25,000 or \$30,000 for this cause.²² When questioned about his earlier statement, Mr. Schreiber stated that, in the year previous to the Inquiry, he had learned that the amount was \$50,000. Mr. Schreiber stated that he did not pay attention to the amount of money he had provided, but that it was registered in the books of his company. He also advised that the amount could have represented more than one donation.²³

Mr. Mulroney’s Evidence

Mr. Mulroney had no recollection of meeting Mr. Schreiber before the leadership review in Winnipeg. Mr. Mulroney did acknowledge, however, that a meeting “may very well have taken place” because he “was being introduced on a regular basis to all kinds of people.”²⁴

Mr. Mulroney described Mr. Schreiber’s claim that 450 delegates from the province of Quebec were flown to Winnipeg to vote against Joe Clark at the leadership review as “the goofiest thing that anybody could ever say.”²⁵ He provided an alternative explanation for the level of support Mr. Clark obtained.

LEADERSHIP CONVENTION, 1983

The resignation of Mr. Clark as a result of the leadership review led to a leadership race. On June 11, 1983, Mr. Mulroney was elected leader of the PC Party. Mr. Schreiber testified that he did not participate in the leadership convention held in Ottawa in 1983.²⁶

Mr. Mulroney did not know whether Mr. Schreiber contributed financially to his leadership bid in June 1983. He noted that Mr. Moores was supporting John Crosbie during the leadership campaign that culminated in Mr. Mulroney’s 1983 election as leader of the PC Party.

Mr. Mulroney said that he did not have a relationship with Mr. Schreiber “by the time” he was elected leader of the PC Party.²⁷

WHILE MR. MULRONEY WAS LEADER OF THE OFFICIAL OPPOSITION

Mr. Mulroney was leader of the official opposition from August 29, 1983, the date of his election in the riding of Central Nova, Nova Scotia, to September 16, 1984, the day before he was sworn in as prime minister.

Mr. Schreiber's Account

Mr. Schreiber could not recall how many times they had met while Mr. Mulroney was leader of the opposition. He testified that the meetings would have been arranged by Mr. MacKay, Mr. Moores, or Mr. MacAdam "and somebody."²⁸ Moreover, Mr. Schreiber stated in his interview with Commission counsel that, when he visited Ottawa, he would see Mr. Mulroney as well as "Mr. Moores and others close to Mr. Mulroney."²⁹ Mr. Schreiber stated that his first official visit occurred when he introduced Mr. Mulroney to Max Strauss (the son of the Bavarian prime minister, Franz Josef Strauss) in late 1983.* During cross-examination, Mr. Schreiber stated that he had "a relative [sic] short meeting with him [Mr. Mulroney] and then Mr. Strauss had a meeting with him [Mr. Mulroney]."³⁰ Mr. Schreiber agreed with the suggestion that he acted as facilitator between Mr. Strauss and Mr. Mulroney and confirmed that he did not transact any business with Mr. Mulroney at the meeting. Mr. Schreiber had earlier stated that he would entertain Max Strauss when Mr. Strauss came to Canada.

Mr. MacAdam's Account

Pat MacAdam is a long-time friend of Mr. Mulroney, their relationship going back to their student days at St. Francis Xavier University in Nova Scotia. Mr. MacAdam testified that Mr. Mulroney did not know Mr. Schreiber before he became a member of parliament or the leader of the opposition.

During Mr. Mulroney's tenure as leader of the opposition, Mr. MacAdam was Mr. Mulroney's caucus liaison officer. One of Mr. MacAdam's responsibilities was arranging appointments for Mr. Mulroney. Mr. MacAdam testified that he witnessed only one meeting between Mr. Schreiber and Mr. Mulroney while Mr. Mulroney was leader of the opposition. According to Mr. MacAdam, on that occasion Max Strauss and Mr. Schreiber showed up at Mr. Mulroney's Centre Block office after Mr. MacAdam had received a call from Robert Coates inquiring about Mr. Mulroney's availability to meet Mr. Strauss following Question Period one day. Mr. MacAdam said that "[i]t wasn't a photo op, it was just a hello, courtesy call. I'm not even sure if Brian and Karlheinz exchanged any pleasantries other than a handshake."³¹

Mr. MacAdam had previously made comments on the CBC's *the fifth estate* that were at odds with his testimony before the Commission. On the segment that was broadcast on October 20, 1999, Mr. MacAdam made the following comments:

They knew each other long before Mr. Mulroney became an MP and leader of the opposition – I don't know where they met, maybe through the Strausses – and he'd pay a courtesy call on Mr. Mulroney in the Office of the Leader of the Opposition. I was the gatekeeper then and kept the appointments, and he'd come in with Max Strauss and say hello and leave.³²

* Mr. Schreiber's affidavit of November 2007, refers to only one meeting while Mr. Mulroney was leader of the opposition. Exhibit P-7(3), tab 21, para. 6.

On *the fifth estate* segment that was broadcast on March 14, 2001, Mr. MacAdam stated:

He [Mr. Schreiber] was a close friend of Mr. Mulroney's. They knew each other long before Mr. Mulroney became an MP and leader of the opposition.³³

On being questioned about his prior statements, Mr. MacAdam explained that he meant to tell *the fifth estate* that Mr. Mulroney and Franz Josef Strauss (not Mr. Schreiber) knew each other long before Mr. Mulroney became a member of parliament and the leader of the opposition. Mr. MacAdam did not know whether Franz Josef Strauss visited Mr. Mulroney during that period.

Moreover, Mr. MacAdam testified, he was convinced in his mind that Mr. Mulroney did not know Mr. Schreiber before he became leader of the opposition or a member of parliament ("I don't think he knew him from a hole in the ground").³⁴

Mr. MacAdam also testified that Mr. Schreiber visited only once during that period and never came alone to meet with Mr. Mulroney. Mr. MacAdam would have known about meetings between Mr. Mulroney and Mr. Schreiber because Mr. Schreiber would have had to "walk by [his] office to get in the door."³⁵

Mr. MacAdam was interviewed by Mr. Kaplan on July 18, 2004. Mr. Kaplan's notes say that Mr. MacAdam told him that Mr. Mulroney kept Mr. Schreiber at arm's length. Mr. Schreiber "used to show up with Strauss's son. I do not think Mulroney would have seen him otherwise. Brian Mulroney was pretty thick with Franz Josef Strauss. Schreiber was a very funny guy. A little guy. He could light up a room."³⁶

On being questioned about Mr. Kaplan's notes, Mr. MacAdam testified that two aspects of Mr. Kaplan's notes were inaccurate:³⁷ Mr. MacAdam denied stating to Mr. Kaplan that Mr. Mulroney kept Mr. Schreiber at arm's length and explained that he did not "know that"; and, with respect to Mr. Kaplan's note that Mr. Schreiber "used to show up with Strauss's son," Mr. MacAdam stated that Mr. Schreiber "showed up once with Max Strauss, unexpected and uninvited." Mr. MacAdam also testified that Mr. Mulroney and Franz Josef Strauss knew each other; however, he did not know whether Mr. Mulroney was "pretty thick" with Franz Josef Strauss.

Mr. Mulroney's Account

According to Mr. Mulroney, before he became prime minister his relationship with Mr. Schreiber was "essentially non-existent." However, he acknowledged that he "might have run into him at a political event or something like that."³⁸

Mr. Mulroney had no recollection of meeting Mr. Schreiber and Max Strauss while he was leader of the opposition but did not challenge Mr. MacAdam's testimony and stated that "if MacAdam or someone says that it happened, then it happened."³⁹

Mr. Mulroney testified that he had never met with Franz Josef Strauss and did not know Max Strauss.⁴⁰

Relationship While Mr. Mulroney Was Prime Minister

Mr. Mulroney was sworn in as Prime Minister of Canada on September 17, 1984 (the election was held on September 4) and remained in office until June 24, 1993.

Mr. MacAdam's Evidence

From 1984 to December 1987, while acting as the caucus liaison officer in the PMO, Mr. MacAdam did not set any meetings between Mr. Mulroney and Mr. Schreiber. Mr. MacAdam testified that he was not aware of any meetings between them.⁴¹

Mr. Schreiber's Evidence

Mr. Schreiber confirmed that he said that it was “simple for [him] to gain access to” Mr. Mulroney while he was prime minister.⁴² Mr. Schreiber confirmed that he met with Mr. Mulroney quite often while Mr. Mulroney was prime minister, despite Mr. Schreiber's being in Canada only eight to 10 weeks a year between 1988 and 1994. According to Mr. Schreiber, he had both prearranged meetings and drop-ins with Prime Minister Mulroney.

Mr. Schreiber could not say precisely how often he had met with Mr. Mulroney, although he did not deny that they met at least 10 or 11 times while Mr. Mulroney was prime minister. As I discuss later in this chapter, they appear to have met on the following dates at least: August 23, 1989; July 3, 1990; September 9, 1990; April 10, 1991; June 13, 1991; May 5, 1992; November 25, 1992; June 3, 1993; and June 23, 1993.

Mr. Schreiber testified that he was working on the Bear Head Project for eight-and-a-half years (or longer) and stated that it was a “joke” that he met with the prime minister only once a year.⁴³ Mr. Schreiber explained that they met much more often “... but not in – what can I say, for meetings that had been set up on the project or what. I may have seen him with Frank. I may have seen him in the lobby. I may have seen him in the hall from the House. I may have seen him at fund raising dinners, whatever it is.”⁴⁴ Mr. Schreiber also noted that he saw Mr. Mulroney in the lobby of Parliament and “in the room behind Parliament.”⁴⁵ Mr. Schreiber testified that everybody knew they were meeting and noted that “[i]t was all over the place, common knowledge that I met with him all the time.”⁴⁶ Mr. Schreiber testified that he had access to the prime minister through Mr. Doucet, Mr. Moores, and “more even” Mr. Ouellet (a principal in the lobby firm GCI).⁴⁷ Mr. Schreiber stated that he also had telephone calls with Mr. Mulroney. Further, depending on the time period, Mr. Schreiber spoke with Mr. Mulroney while Mr. Schreiber was outside Canada.

Mr. Schreiber agreed that he never had a one-on-one meeting with Mr. Mulroney while he was prime minister, except for the meeting on June 23, 1993 (discussed below), and one undated meeting in which they discussed helping a mutual

friend, and agreed that the meetings related to “private business”⁴⁸ unrelated to the matters before the Commission. Mr. Schreiber stated that, when they met at social events, they talked both about Bear Head and on a social basis. Mr. Schreiber also stated that he was not concerned that the understanding in principle (UIP), a document signed by ministers in Mr. Mulroney’s government on which Thyssen relied to pay out a commission or “success payment” as described by Mr. Schreiber in the sum of \$4 million, did not create a binding commitment on the part of the government, because he had Mr. Mulroney’s “word the project was going to happen.”⁴⁹

Mr. Schreiber told *the fifth estate* (which aired in February 2006) that he and Mr. Mulroney would meet in “[Mr. Mulroney’s] office, at the building ... or at the restaurant or in the club or what, when [Mr. Mulroney] was with others.” He had never been to Mr. Mulroney’s home, and Mr. Mulroney had never been to his home.⁵⁰

According to Mr. Schreiber, the friendship reached the point where they “were always straightforward.” For instance, Mr. Schreiber said, he felt comfortable expressing his opinion that Kim Campbell should resign as minister of national defence if Mr. Mulroney were of the view that she would be the best choice to be the next prime minister.⁵¹

Mr. Mulroney’s Evidence

According to Mr. Mulroney, while he was prime minister he had an acquaintanceship, not an unfriendly one, with Mr. Schreiber; but at no time did he have a close relationship or friendship with him.*

Mr. Mulroney testified that, when he was prime minister, he never consented to meeting with Mr. Schreiber and stated that Mr. Schreiber had “no access to me whatsoever”;⁵² however, later in his examination, Mr. Mulroney acknowledged that Mr. Schreiber had access to him and other government officials.

Mr. Mulroney could not recall how many meetings he had with Mr. Schreiber while he was in office, but stated that, “if you told me it was six, I would agree with you. If you told me it was eight or nine, I would agree with you.”⁵³ Mr. Mulroney noted that, despite his busy schedule as prime minister, he had time to meet with “hundreds of Schreibers” – and that meeting people on a repeated basis “wasn’t in any way exceptional.”⁵⁴ Mr. Mulroney testified that “[i]t would not be usual to see anybody on a business proposal 10 or 15 times, but I don’t think that I saw Mr. Schreiber that often.”⁵⁵

* On May 4, 2009, Mr. MacKay testified regarding the relationship between Mr. Schreiber and Mr. Mulroney, stating that “[a]t times they appeared to be quite close, but then, later on, the relationship deteriorated.” Testimony of Mr. Elmer MacKay, Transcript, May 4, 2009, p. 2822. When asked whether Mr. MacKay’s observation was accurate, Mr. Mulroney testified that it was an “unintentional” observation on Mr. MacKay’s part “because what he probably – what he may have meant was closer than it otherwise really was. That’s possible.” Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3891–93.

Mr. Mulroney explained that his meetings with Mr. Schreiber, while Mr. Mulroney was prime minister, came about because of requests made by either Mr. MacKay, a cabinet minister, or Mr. Doucet, a close friend of Mr. Mulroney's and Mr. Schreiber's lobbyist. Mr. Mulroney testified that he had close relationships with both Mr. MacKay and Mr. Doucet and provided them access in this sense:

But what I could give them was access, not access to me but access in the following sense. If they came to me, as Elmer did – and said look, I don't think that this project is – it has now been changed from the original letter that you got in 1985 from Thyssen. It has changed from that. It is going to cost more, but it can do much more, more jobs created and so on. I don't think this is getting a fair shake from the federal bureaucracy.⁵⁶

In further explanation, Mr. Mulroney stated that “what helped him [Mr. Schreiber] a great deal in Ottawa was that he was friendly with one of the most respected Cabinet Ministers in town, Elmer MacKay.”⁵⁷ Mr. Mulroney testified that he would often see people from Atlantic Canada because of Mr. MacKay and would be “happy to see whomever Elmer asked me to see, whenever I could.”⁵⁸ Mr. Mulroney testified that he “owed everything” to Mr. MacKay⁵⁹ and explained that Mr. MacKay gave up his seat in Nova Scotia in 1983 to allow Mr. Mulroney to run in a by-election, an opportunity that allowed him to acquire a seat in the House of Commons before the 1984 election. Mr. Mulroney stated that he moved mountains for Mr. MacKay. He appointed Mr. MacKay as his senior adviser in the Office of the Leader of the Opposition and to various ministerial portfolios when he was prime minister.

With respect to Mr. Doucet, Mr. Mulroney testified that they had a friendship that dated back 50 years and he knew that Mr. Doucet was representing Mr. Schreiber. The Commission received evidence that Mr. Mulroney's friendship with Mr. Doucet began in the 1950s, while they were students at St. Francis Xavier University. Over the years, Mr. Doucet remained connected with Mr. Mulroney: Mr. Doucet was involved in campaigning during Mr. Mulroney's bids to become leader of the Progressive Conservative Party and prime minister; Mr. Mulroney, when he was leader of the opposition, appointed Mr. Doucet as his chief of staff; and Mr. Doucet acted as a senior adviser in the Prime Minister's Office, from September 1984 to May 1987.*

* According to an article by Norma Greenaway, published on December 7, 2007, entitled “Mulroney's Ultimate Righthand Man, Fred Doucet, Plays Key Role in Story,” Mr. Doucet's officemates used to joke and say that Mr. Doucet was sleeping at the foot of Mr. Mulroney's bed. Exhibit P-44, tab 116. In an article by Val Sears, published in the *Toronto Star* on February 13, 1987, Mr. Mulroney was quoted as saying: “[I]f I asked Fred to move a building across the street one inch to the left by morning, Fred would do it, no questions.” Mr. Mulroney testified that the comment was made to demonstrate Mr. Doucet's “great determination,” “and loyalty and skill.” Exhibit P-43, tab 9. Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3898–900. Mr. Doucet acknowledged that he had a very good and friendly relationship with Mr. Mulroney and that he is very loyal to Mr. Mulroney. Testimony of Mr. Fred Doucet, Transcript, April 27, 2009, pp. 2093–94.

Mr. Mulroney believed that all the meetings with Mr. Schreiber were about the Bear Head Project and that the two men did not have social get-togethers. Mr. Schreiber was known to him as a “forceful, determined advocate of” the Bear Head Project and “an accomplished entrepreneur.”⁶⁰

According to Mr. Mulroney, Mr. Schreiber’s access to him and to a number of high-ranking public officials through Mr. Doucet and Mr. MacKay did not influence the way he dealt with the Bear Head file. Mr. Mulroney noted that, in the end, he “cancelled the project” and “killed the deal.”⁶¹

Mr. Mulroney acknowledged that a brunch or private meeting with the prime minister would be hard to come by. He later noted that, “in any government, it would probably be extremely difficult” to get to see the prime minister.⁶²

Mr. Doucet’s Evidence

Mr. Doucet, who in 1988 had been retained by Mr. Schreiber for lobbying and giving advice involving the Bear Head Project, acknowledged that he had met with Mr. Mulroney and Mr. Schreiber on a number of occasions. According to Mr. Doucet, they would have business meetings on the subject of Bear Head. Mr. Doucet did not remember social meetings involving himself, Mr. Schreiber, and Mr. Mulroney.

Mr. Doucet testified that Mr. Schreiber had alternative ways of securing meetings with Mr. Mulroney: “Whether he [Mr. Schreiber] got those meetings by himself or through others, I don’t know that.”⁶³ Mr. Doucet agreed that Mr. Schreiber had “a bit of contact with Prime Minister Mulroney” and with “people in close proximity to the Prime Minister.”⁶⁴

Mr. Doucet also agreed that it was a “fair assumption” that Mr. Schreiber would not “be averse to dropping the Prime Minister’s name” while he was meeting with people in government.⁶⁵

Mr. Spector’s Evidence

Norman Spector, who was Mr. Mulroney’s chief of staff from September 1990 to February 1992, agreed with the suggestion that the number of meetings between the prime minister and Mr. Schreiber was “unusually high.” Mr. Spector could not think of another example of a company representative having that kind of access to the prime minister: “Frankly I can’t think during my time of anything that comes close to this.”⁶⁶

Mr. Tellier’s Evidence

Paul Tellier, who was clerk of the privy council from August 1985 to June 1992, stated that it was difficult for him to determine whether Mr. Mulroney’s level of involvement in the Bear Head Project was unusual “because there are many factors that come into play.” Mr. Tellier listed the following factors as relevant when considering whether Mr. Mulroney’s involvement was unusual: Mr. Mulroney had roots in the Maritimes,

where he had received some of his education; Mr. Mulroney's history as a member of parliament for Central Nova; and that it was a priority, "as Prime Minister and as leader of the party, to try to do something for eastern Canada." After listing these factors, Mr. Tellier stated that he could not think of another example where he was a witness to the prime minister having meetings and correspondence over several years with the promoters of a project. However, Mr. Tellier also stated that it was not unusual for the prime minister to be drawn into "a complex project or a difficult issue."⁶⁷

According to Mr. Tellier, the Bear Head file was "the best example" of the counterproductive effect of trying to use political channels in order to advance a file.⁶⁸

Correspondence and Meetings While Mr. Mulroney Was Prime Minister

Mr. Schreiber wrote 14 letters to Mr. Mulroney during the latter's years as prime minister – the first in August 1989 and the last four in March 1993.* Very often, Mr. Schreiber would write to Mr. Mulroney following a meeting between them. Mr. Mulroney replied to Mr. Schreiber on September 18, 1989, and on March 29, 1993.⁶⁹

OVERVIEW OF MR. MULRONEY'S EVIDENCE

Except for one letter regarding a political convention, Mr. Mulroney had no recollection of receiving or reading Mr. Schreiber's letters. Mr. Mulroney confirmed that the Prime Minister's Office (PMO) received a high volume of correspondence and that a process was in place that caused the incoming correspondence to be separated into three categories (correspondence on policy issues, political correspondence, and personal correspondence). Mr. Mulroney explained that, at night, he would read the letters that had been sorted and provided to him. He testified that letters from lobbyists or promoters were not forwarded to him, and he noted:

Lobbyist letters are a dime a dozen, and they don't come to the Prime Minister. They go to correspondence or wherever, and if somebody feels that someone in the Chief of Staff's office or the Executive Assistant's office should take a look at it, I assume they send it to them, but not to the Prime Minister. I doubt it if this stuff would ever get to the Clerk of the Council or even the Chief of Staff to the Prime Minister.⁷⁰

Mr. Mulroney acknowledged, however, that it was possible that, "once in a blue moon, one [a letter from a lobbyist] slips through."⁷¹

On December 2, 1997, Mr. Mulroney told Mr. Kaplan that he had correspondence with Mr. Schreiber on the Bear Head initiative. Mr. Mulroney told the Commission that he did so because he had been informed by a staffer that some correspondence from Mr. Schreiber on the topic of the Bear Head Project "had come in."⁷²

* Exhibit P-7(4), tabs 2, 4–16. Mr. Schreiber acknowledged that he had often written to Prime Minister Mulroney. Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 278.

MR. SCHREIBER'S AGENDA ENTRIES

With respect to his agenda entries, Mr. Schreiber informed the Commission that not all his meetings with Mr. Mulroney were documented in his agenda, nor could he confirm that all the meetings marked in his agenda occurred.⁷³ In further explanation, Mr. Schreiber stated: "Well, I have to tell you something now. Whenever you see an entry in my diary, these are intentions. Whether they were all fulfilled, I cannot tell you."⁷⁴ Mr. Schreiber noted that some meetings and phone calls that occurred were not noted in his diaries.

MEETINGS AND LETTERS

The Commission received evidence that Mr. Mulroney and Mr. Schreiber met on a number of occasions during Mr. Mulroney's tenure as prime minister, starting in December 1987 and ending one day before Mr. Mulroney left office on June 24, 1993.

Meeting on December 13, 1987

Mr. Mulroney's Evidence

On being questioned about an entry in Mr. Schreiber's agenda for December 13, 1987, "11:30 Brunch Ric Logan Sam Wakim Brunch PM,"⁷⁵ Mr. Mulroney stated that he had no recollection of this "lunch" and made the following comment: "Ric Logan and Sam Wakim and Mr. Schreiber? That would be a first. However, it's possible."⁷⁶

Meeting on August 23, 1989⁷⁷

Mr. Schreiber's Evidence

On August 28, 1989, Mr. Schreiber wrote a letter to Mr. Mulroney in which he stated that it had been an "unexpected pleasure" to meet him at the annual meeting of the PC Party and that he had been moved by Mr. Mulroney's address.⁷⁸ Attached to Mr. Schreiber's letter was the 1982 telegram he received from Mr. Mulroney (whom Mr. Schreiber described in the letter as "a friend").⁷⁹ During his testimony, Mr. Schreiber confirmed that they had met in August 1989 at the PC Party general convention.

Mr. Mulroney's Evidence

Mr. Mulroney had no recollection of meeting Mr. Schreiber at the "general meeting" but stated that they probably bumped into each other during the event, which would have been attended by three or four thousand delegates. Mr. Mulroney stated that he would have "said hello."⁸⁰

Mr. Mulroney was asked about his letter to Mr. Schreiber, dated September 18, 1989, which stated at the third paragraph:

It was with interest that I read the telegram I sent you back in 1982 when you received your Canadian citizenship. That date now seems so long ago; a lot has happened in the space of a few short years. You can be proud of your contribution to helping to ensure the continued growth and future prosperity of your new home, Canada.⁸¹

Mr. Mulroney testified that the September 18, 1989, letter appears to be signed by a signature machine and noted that he would not have seen it before the letter was sent. According to Mr. Mulroney, he would correspond

with anyone from the Party who wrote to me personally and I clearly had run into him at a party meeting, and I would have absolutely responded to anybody who attended a General Meeting of the Party with a letter that would have been drafted by the party and/or the Prime Minister's Office and sent it out, sure.⁸²

Meeting on July 3, 1990⁸³

Mr. Schreiber's Evidence

On July 6, 1990, Mr. Schreiber wrote a letter to Mr. Mulroney expressing appreciation for Mr. Mulroney's "taking the time to meet" on "Tuesday morning" and inquiring whether he could do anything to help regarding Mr. Mulroney's upcoming trip to Germany. Mr. Schreiber referred to himself in the letter "as a friend" and also offered his continued support to Mr. Mulroney.⁸⁴ Mr. Schreiber confirmed the meeting described in the letter.⁸⁵ An entry in Mr. Schreiber's agenda also confirms the meeting.⁸⁶ In addition, a memorandum to the prime minister from Paul Tellier dated July 12, 1990, suggests that Mr. Mulroney arranged for Mr. Tellier to meet with Mr. Schreiber.⁸⁷

Mr. Mulroney's Evidence

Mr. Mulroney stated that he did not recall having a meeting with Mr. Schreiber on July 3, 1990, and subsequently arranging for a meeting between Mr. Schreiber and Mr. Tellier. Mr. Mulroney testified that he would have arranged for a meeting between Mr. Tellier and Mr. Schreiber at Mr. MacKay's request.⁸⁸

Mr. Schreiber's Letter of August 27, 1990

Mr. Schreiber's Evidence

On August 27, 1990, Mr. Schreiber wrote a letter to Mr. Mulroney, thanking him for the telephone conversation they had the week before and hoping "that [Mr. Mulroney's] mother's birthday celebration was a happy event." Mr. Schreiber's letter goes on to speak of matters in relation to the armoured vehicles, Bear Head, and the "Mohawk situation."⁸⁹

*Mr. Mulroney's Evidence**

Mr. Mulroney did not recall a telephone conversation with Mr. Schreiber in August 1990, or, more precisely, he did not recall discussing his mother's birthday with Mr. Schreiber. Mr. Mulroney did not recall ever placing a phone call to Mr. Schreiber, or receiving one from him, during his tenure as prime minister. Mr. Mulroney acknowledged that it would be difficult to reach the prime minister by phone and explained that phone calls were carefully monitored and segregated by his staff. Mr. Mulroney suggested that Mr. Schreiber might have been put on the line and added: "Maybe he was with Elmer or maybe he ran into me at a birthday party for my mother at the Château or something. I have no idea."⁹⁰

Mr. Mulroney pointed out that Mr. Schreiber was putting it on "[f]airly thick" by wanting to solve the Mohawk situation and agreed that Mr. Schreiber was "a bit of a prevaricator." Mr. Mulroney subsequently pointed out that he was not reading Mr. Schreiber's letters at the time.⁹¹

Meetings in September 1990

Mr. Schreiber's Evidence

On October 10, 1990, Mr. Schreiber wrote a letter to Mr. Mulroney referring to "the most enjoyable meeting we had last month" and the "discussions of our meeting last week." Mr. Schreiber also stated that it was "a great pleasure to recognize that old friends never change."⁹² Mr. Schreiber confirmed meeting with Mr. Mulroney in September 1990.⁹³ Mr. Schreiber's agenda suggests that they met on September 9, 1990, and on September 24, 1990.⁹⁴

Mr. Mulroney's Evidence

On being questioned about whether he met with Mr. Schreiber on September 9, 1990, Mr. Mulroney initially stated that he had "no recollection of it";⁹⁵ however, after being read the following passage from his examination before plea, Mr. Mulroney agreed that he was aware of the September 9, 1990, meeting because he had testified to it:

And so I met with him [Mr. Schreiber], and Mr. Paul Tellier, who was the clerk of the Privy Council and the Secretary of the Cabinet, I met with him in his presence. We listened to him. I asked Mr. Tellier to refer this matter to the Defence Department.**

* According to Mr. Mulroney, the annotation "Personal Confidential, for his eyes only," appearing on the top of the letter of August 27, 1990, did not affect the handling of the correspondence. Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3441.

** Exhibit P-48, April 17, 1996, p. 89. Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3966–67. Earlier during his testimony, Mr. Mulroney testified that he remembered an important meeting with Mr. Tellier and Robert Fowler (former deputy minister of national defence), without knowing "exactly when or where, but it was in that timeframe." Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3830.

Mr. Mulroney then explained that meetings took place during this period because the Bear Head Project had been reconfigured and could possibly address safety issues associated with Canadian peacekeepers. After being informed that the Bear Head Project had not yet evolved to include an international peacekeeping element, Mr. Mulroney stated “we may not be there yet” and noted, “but you can be certain that Mr. Schreiber was there with this idea, a new – a new dimension to it.”⁹⁶ Mr. Mulroney also acknowledged that Mr. Schreiber’s agenda said “Brian Mulroney” at 17:00 on September 24, 1990.

With respect to the comment “[w]hat a great pleasure to recognize that old friends never change” contained in Mr. Schreiber’s letter dated October 10, 1990, Mr. Mulroney commented that they were not “old friends” and agreed that it was not fair to suggest that “what is happening is a distortion in effect. He [Mr. Schreiber] has a feeling about your relationship which in reality is not the way it was according to you.”⁹⁷

Meeting on April 10, 1991⁹⁸

Mr. Tellier’s Evidence

Mr. Tellier testified that, on April 10, 1991, he received a message that the prime minister was wondering whether he could come downstairs for a few minutes. When he entered the office, he saw Mr. Schreiber and Mr. Doucet sitting in front of Mr. Mulroney’s desk. Mr. Mulroney asked for a status report on the Bear Head Project. Mr. Tellier informed Mr. Mulroney that the file was still under consideration. Mr. Tellier’s recollection was that the meeting lasted 30 minutes. Mr. Tellier did not recall that the prime minister was there for only part of the meeting and that he was left alone with the other two, as Mr. Schreiber had stated in a follow-up letter.⁹⁹

Mr. Mulroney’s Evidence

Mr. Mulroney testified that the April 10, 1991, meeting came about in the same way as all the other meetings he had with Mr. Schreiber: at the request of either Mr. Doucet or Mr. MacKay. With specific reference to the April 10, 1991, meeting, Mr. Mulroney advised that he had been told that the Bear Head Project had changed in nature and was not “getting a fair shake from the federal bureaucracy.”¹⁰⁰ Mr. Mulroney asked Mr. Tellier to join him, Mr. Schreiber, and Mr. Doucet at a meeting. During the course of that meeting, Mr. Mulroney requested that Mr. Tellier evaluate the revised Bear Head proposal.

Mr. Doucet’s Evidence

Mr. Doucet wrote a letter to Mr. Tellier on April 12, 1991, stating that “[a]s an addition to the updated MOU that I left with you yesterday, I now enclose a brief review of the project prepared by Bearhead Industries.”¹⁰¹ The review outlined Bear

Head Industries' proposal, which included a requirement that the Department of National Defence place an order for 250 armoured vehicles for the multi-role combat vehicle (MRCV) program.

Mr. Schreiber's Evidence

Mr. Schreiber provided an interview to Mr. Kaplan on November 11, 1998, during which he gave his perspective of that meeting.¹⁰²

Mr. Schreiber wrote a letter to Mr. Mulroney on April 19, 1991,¹⁰³ stating that there were a "few items" to follow up on "our meeting of last week." Mr. Schreiber noted that he would not comment on the continuing meeting he had with Mr. Tellier after Mr. Mulroney's departure, "as I know, Fred will do this." In the letter, Mr. Schreiber complained about several individuals with whom he had had to deal regarding Bear Head.

Mr. Schreiber wrote to Mr. Tellier on May 7, 1991,¹⁰⁴ lamenting the lack of progress following the April 10, 1991, meeting. Mr. Tellier testified that, when he reviewed this letter, he made handwritten comments on it (such as "not accurate") to help the people drafting the reply.¹⁰⁵

During his testimony, Mr. Schreiber said that he and Mr. Mulroney had met in the week before April 19, 1991.¹⁰⁶

Mr. Schreiber's Letter to Mr. Mulroney of May 9, 1991

Mr. Schreiber's letter of May 9, 1991, suggests that, during the April 10, 1991, meeting, Mr. Mulroney asked Mr. Schreiber to be kept informed "of matters around our project" (to this end, Mr. Schreiber enclosed a letter that was not in evidence before the Commission). Mr. Schreiber concluded his May 9 letter as follows: "I recall very well our breakfast meeting, when you told me how difficult it is to get things done. I understand the meaning of that statement more every day."¹⁰⁷

Meeting in June 1991 in Bonn, Germany

Mr. Schreiber's Account

On November 7, 2007, Mr. Schreiber swore an affidavit in connection with a lawsuit he had commenced to recover the money he alleges he paid to Mr. Mulroney. According to that affidavit, he met with Mr. Mulroney in Bonn, Germany, on June 13, 1991, "at a luncheon hosted by the Government of Germany in honour of Canada's role and, in particular, Mr. Mulroney's efforts in bringing about the reunification of Germany."¹⁰⁸ They also met at a reception hosted by the Government of Canada that evening.¹⁰⁹ During his testimony, Mr. Schreiber maintained that they had met in Germany.

Mr. Lavoie's Account

During his interview with Commission counsel,¹¹⁰ Luc Lavoie stated that Mr. Mulroney and Mr. Schreiber attended a state dinner in Bonn, with approximately 30 guests in attendance.¹¹¹ Mr. Lavoie was at the time Mr. Mulroney's deputy chief of staff in charge of operations* and was travelling with Mr. Mulroney for his visit to "the Chancellery" in Bonn. Mr. Lavoie explained that, at one point, the presence of Mr. Schreiber, whom he did not know, was brought to his attention because Mr. Schreiber was claiming, in an agitated fashion, that he was invited to a reception. Mr. Schreiber was in the company of Michel Cogger, whom Mr. Lavoie knew, and was introduced by Mr. Cogger as his friend. On the strength of Mr. Cogger's words, Mr. Lavoie gave Mr. Schreiber his own access card so that he could attend the dinner.¹¹²

Meeting on October 2, 1991

According to Mr. Doucet, it "certainly appear[ed]" from his diary and from Mr. Schreiber's agenda entry for October 2, 1991, that there was a meeting among Mr. Schreiber, Mr. Mulroney, and himself on October 2, 1991.¹¹³

Mr. Mulroney's daily schedule for October 2, 1991, filed as an exhibit subsequent to Mr. Doucet's testimony, indicates "Q. P. Briefing" at 1h45 and "Question Period" at 2:15.¹¹⁴

Meeting on May 5, 1992¹¹⁵

Mr. Schreiber's Evidence

On May 6, 1992, Mr. Schreiber wrote to Mr. Mulroney, thanking him for finding the time to meet on May 5, 1992. In the first paragraph of the letter, Mr. Schreiber stated that he was "greatly heartened by [Mr. Mulroney's] sympathetic understanding of the situation and [his] determination to set things in train." In this letter, Mr. Schreiber also informed Mr. Mulroney that they were working, as recommended by Mr. Mulroney, on "a 2 page summary of the actions necessary to realize the project as you would like to see it"; that they were investigating the possible establishment of the Bear Head Project in east Montreal; and that he had a very good meeting with Mr. MacKay and Marcel Masse, the minister of national defence.¹¹⁶ During Mr. Schreiber's examination, he testified that he met with Mr. Mulroney on May 5, 1992, and that Mr. Mulroney recommended that he work on a summary.¹¹⁷

The last paragraphs of Mr. Schreiber's May 6, 1992, letter read:

With regard to your suggestion that we get together when you are in Munich, perhaps you would ask one of your staff to give me information on your program, so that my

* In 1991 Mr. Lavoie was deputy chief of staff, operations, in the PMO and "was in charge of operations, logistics and scheduling for the Prime Minister." Exhibit P-65, p. 1.

family and I can help you and your family to enjoy your visit to our home city.

I look forward to seeing you again next week.¹¹⁸

On May 13, 1992, Mr. Schreiber wrote a letter to Mr. Mulroney in which he stated that he “had very encouraging meetings with representatives of the Premier and officials from the Province of Quebec, and with four senior Army Generals”;¹¹⁹ and that he would keep Mr. Mulroney informed on the progress of the Bear Head Project. *

Mr. Mulroney’s Evidence

According to Mr. Mulroney, the May 5, 1992, meeting would have been organized by Mr. MacKay and would have been on the subject of the Bear Head Project.

Mr. Mulroney testified that he did not recommend that they work on “a 2 page summary of the actions necessary to realize the project as you would like to see it,” as suggested by Mr. Schreiber in his letter of May 6, 1992.¹²⁰ Mr. Mulroney also stated that he did not make the suggestion that they should meet in Munich.

Mr. Schreiber’s Letter of May 22, 1992

On May 22, 1992, Mr. Schreiber wrote a letter to Mr. Mulroney, “as promised,” to keep him informed of recent events with respect to the Bear Head Project (which Mr. Schreiber referred to as being “our” project). Mr. Schreiber wrote about the very positive support he had received from Jean Corbeil, the minister of transport, and mentioned an unhelpful meeting with the Department of National Defence.¹²¹

Meeting(s) in November 1992

Mr. Schreiber’s Evidence

On December 3, 1992, Mr. Schreiber wrote a letter to Mr. Mulroney thanking him for “the great honour of again being a guest at your home for a most delightful breakfast and constructive discussion.”¹²² Mr. Schreiber also thanked Mr. Mulroney for asking David McLaughlin (at the time, one of the deputies to Mr. Mulroney’s chief of staff) to oversee the progress of the Thyssen / Bear Head Industries proposal on Mr. Mulroney’s behalf. Mr. Schreiber also wrote: “Bärbel and I do very much look forward to the opportunity when we can host you and Mila in one of our homes, so that we may return your kind hospitality.”¹²³ In his testimony, Mr. Schreiber described breakfast with Mr. Mulroney, which he said took place at the government’s guest house on Sussex Drive in Ottawa.¹²⁴ Mr. Schreiber’s agenda shows meetings with Mr. Mulroney at 4:30 p.m. on November 24, and at 9 a.m. for breakfast on November 25.¹²⁵

* Exhibit P-7(4), tab 10. On May 13, 1992, Mr. Schreiber also wrote to Marcel Masse, minister of national defence, referring to some kind of agreement Mr. Schreiber had reached with Mr. Mulroney. Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, pp. 4031–34. Exhibit P-7(4), tab 10. pp. 2–3.

Mr. Mulroney's Evidence

Mr. Mulroney had no recollection of meeting with Mr. Schreiber and Mr. Doucet on November 24, 1992, and noted that a meeting was scheduled for the next morning. He testified that he would not have met with Mr. Schreiber two days in a row “unless there was a specific request from Elmer for a particular thing.”¹²⁶ Mr. Mulroney remembered the breakfast meeting because he had seen a photograph of himself, Mr. Schreiber, Mr. MacKay, Mr. Doucet, and Mr. McLaughlin. He testified on how the meeting would have come about:

So Elmer, clearly, would have asked me to see him, and my schedule didn't allow it at certain times, and I said to Elmer: Why don't you come by for breakfast, or what have you, I am free on such-and-such a day. That's the way, I assume, it worked out.¹²⁷

According to Mr. Mulroney, he asked Mr. McLaughlin, to have “a look at this, or to receive somebody.”¹²⁸ Mr. Mulroney testified that, at that time, he did not know Mr. Schreiber's wife.

Mr. Doucet's Evidence

Mr. Doucet acknowledged that Mr. Schreiber had come in from out of town on November 23, 1992, and that there was a meeting between Mr. Schreiber and Mr. Mulroney in the afternoon of November 24, 1992. Mr. Doucet also acknowledged that there were some calls between him and Mr. Schreiber before the afternoon meeting. Mr. Doucet testified that it “certainly appear[ed]” that Mr. Schreiber and Mr. Mulroney met on November 24 and 25, 1992.¹²⁹

Mr. Schreiber's Letter to Mr. Mulroney of March 15, 1993

Mr. Schreiber's Evidence

On March 15, 1993, Mr. Schreiber wrote a letter to Mr. Mulroney expressing “feelings of sadness about the political developments in Canada since [we] last met,”* thanking him for all his “efforts to keep the country together for a better future,” and wishing him and his family “a destiny of comfort and happiness.” Mr. Schreiber said that Mr. Mulroney would soon find out who his real friends were and that “two of them live partly in Bavaria.” The letter concludes with Mr. Schreiber inviting Mr. Mulroney and his wife to Bavaria.¹³⁰

Mr. Mulroney's Evidence

On March 29, 1993, Mr. Mulroney wrote a letter to Mr. Schreiber that may have been prepared in response to Mr. Schreiber's letter of March 15, 1993. Mr. Mulroney testified that the March 29, 1993, letter was prepared in the context of his resignation, which

* As described earlier in this chapter, it appears the meeting referred to was in November 1992.

he announced in late February 1993.¹³¹ Mr. Mulroney explained that a draft would have been prepared by the PMO and that “these would have come to me because I am leaving office and I would add a little note here for Harry or Jim or Pat or something, that’s all.”¹³²

Mr. Mulroney’s letter concludes with: “We thank you for your friendship and support. With best personal regards to your family, Yours sincerely, *and with special thanks, Brian.*”¹³³ Mr. Mulroney confirmed that the words reproduced here in italics were in his handwriting.

Mr. Mulroney testified that he never took Mr. Schreiber up on his offer to visit him and Mrs. Schreiber in Bavaria.

Mr. Schreiber’s Letter to Mr. Mulroney of March 16, 1993

On March 16, 1993, Mr. Schreiber wrote a letter to Mr. Mulroney that referred to their friendship of more than 13 years, expressed concerns about the Canadian soldiers in Yugoslavia, and provided an opinion on what was in Kim Campbell’s best political interest. Mr. Schreiber also referred to being at 7 Rideau Gate in the presence of Elmer MacKay and showing Mr. Mulroney a sample of aluminum plate from an M-113 that had been fired on.¹³⁴

Mr. Schreiber’s Letter to Mr. Mulroney of March 23, 1993

On March 23, 1993, Mr. Schreiber wrote a letter to Mr. Mulroney in which he raised further concerns about the situation in Yugoslavia and presented possible solutions involving Mr. Mulroney and German Chancellor Helmut Kohl.¹³⁵

Mr. Schreiber’s Letter to Mr. Mulroney of March 24, 1993

On March 24, 1993, Mr. Schreiber wrote a letter to Mr. Mulroney conveying his opinion about Defence Minister Marcel Masse’s decision to grant a sole-sourced contract for 229 light armoured vehicles to General Motors Diesel Division (GMDD) in April 1992 and suggesting a “more practical solution.”¹³⁶

Meeting on June 3, 1993

At 3:30 p.m. on June 3, 1993, a meeting took place between Messrs. Schreiber, Doucet, David McLaughlin (now Mr. Mulroney’s chief of staff), and Mulroney in the Centre Block of the Parliament Buildings.

Mr. Schreiber's Account

Mr. Schreiber testified that the purpose of this meeting was to update Mr. Mulroney on the status of the Bear Head Project. According to Mr. Schreiber, he and Mr. Mulroney might have spoken about the upcoming Progressive Conservative leadership convention and agreed that they were the kind of colleagues who could discuss politics. Mr. Schreiber also noted that the meeting had a social element to it and described Mr. Mulroney as being a friend at that time.

Mr. Schreiber also explained that Mr. Doucet arranged the June 3, 1993, meeting and noted that Mr. Doucet could “always” provide this type of access to the prime minister.¹³⁷

Mr. Mulroney's Account

Mr. Mulroney had no recollection of the discussion that took place at the June 3 meeting, but stated that he thought he could conclude,

with the documents you conveyed to me, that inasmuch as at one of the earlier meetings I had asked David to take a look at this, and it was tied into his references to Jean Corbeil, I have to assume that they would have discussed something about the graduation of the project to either another phase or another area.¹³⁸

Mr. Mulroney stated that there was no social aspect to the meeting; however, he acknowledged that they would have exchanged pleasantries.

Meetings Between June 23, 1993, and December 8, 1994

Mr. Mulroney and Mr. Schreiber met on June 23, 1993 (Harrington Lake meeting), while Mr. Mulroney was prime minister. They met as well after he left the office of prime minister but was still a member of parliament, on August 27, 1993 (Mirabel Hotel meeting). They also met after Mr. Mulroney left public office, on December 18, 1993 (Queen Elizabeth Hotel meeting), and December 8, 1994 (Pierre Hotel meeting). Beginning with the meeting on August 27, 1993, Mr. Mulroney and Mr. Schreiber entered into a business agreement that resulted in Mr. Mulroney's receiving three cash payments. The details related to these events are set forth in Chapter 6 and are not reviewed here.

There is little evidence of written correspondence and phone contact between Mr. Mulroney and Mr. Schreiber within this period. There is a letter from Mr. Mulroney to Mr. Schreiber, dated March 25, 1994, in which Mr. Mulroney wished Mr. Schreiber a happy 60th birthday.¹³⁹ The compendium of telephone contacts in Mr. Schreiber's agenda shows references to only three telephone contacts (August 23, 1993, August 27, 1993, and December 23, 1994) between the two men during that period.¹⁴⁰

Relationship Between 1995 and 1997

According to both Mr. Schreiber and Mr. Mulroney, they did not meet in 1995, 1996, or 1997 but stayed in contact (through phone calls) after Mr. Schreiber informed Mr. Mulroney of the existence of the government's letter of request (LOR) and throughout the period leading up to the Savoy Hotel meeting on February 2, 1998. Both testified that, during this period, they did not have discussions about their business dealings.

LETTER OF REQUEST

The LOR was sent by Kimberly Prost, senior counsel of the International Assistance Group of the Department of Justice, to the Competent Legal Authority of Switzerland on September 29, 1995. As set out in the LOR, the minister of justice and the Attorney General of Canada were seeking information "for use in relation to the investigation and prosecution of alleged violations of Canadian criminal law by Martin Brian MULRONEY and/or Frank MOORES."¹⁴¹

The details of the alleged violations were outlined in the LOR's "summary of facts."¹⁴² As described in the summary, "The RCMP believes that Mr. SCHREIBER and Mr. MOORES conspired with Mr. MULRONEY to obtain secret commissions to ensure that Airbus Industrie received" a major \$1.8 billion contract to provide Air Canada with 34 Airbus A-320 aircraft. The LOR further described two other governmental contracts of concern. The first contract related to the Bear Head Project; and the second contract was for the Canadian Coast Guard to purchase helicopters and equipment from Messerschmitt-Bolkow-Blohm GmbH (MBB).

Mr. Schreiber's Account

According to Mr. Schreiber, he did not meet with Mr. Mulroney in 1995, 1996, or 1997. In Mr. Schreiber's interview with Commission counsel, he explained that the two men did not meet "face to face" during the period "after the LOR became public" because he was residing in Switzerland at the time.¹⁴³

After Mr. Schreiber became aware of the LOR, he informed Mr. Mulroney of its existence, loosely translated the LOR over the telephone for him, and stayed in telephone contact with him until some time before 2000. In Mr. Schreiber's interview with Commission counsel, he stated that Mr. Mulroney called him "all the time" about the LOR and that Mr. Mulroney seemed to be "out of control."¹⁴⁴ Mr. Schreiber could not say how often these calls occurred, but noted that it "was very intensive at the time when this [sic] problems were on with the letter of request to Switzerland."¹⁴⁵ Mr. Schreiber testified that, during these calls (between 1995 and 1997), he never raised the matter of the payments.¹⁴⁶

Mr. Schreiber thought that he also had telephone contact with Mr. Mulroney in the period between the Pierre Hotel meeting (December 8, 1994) and the time he informed Mr. Mulroney of the LOR. Mr. Schreiber stated that he did not ask Mr. Mulroney what he was doing in connection with the payments. Mr. Schreiber stated that they discussed “the other matters, Stevie Cameron’s book, and things like that.”¹⁴⁷

In Mr. Schreiber’s affidavit dated November 7, 2007, he stated: “In spite of all the difficulties that Mr. Mulroney and I encountered in 1995 and 1996 I did not lose confidence in Mr. Mulroney and was relieved when I received a letter from the Government of Canada ... which contained a ‘full apology’ and acknowledged that ‘some of the language contained in the [LOR]’” contained incorrect conclusions concerning criminal activity.¹⁴⁸

Robert Fife’s Newspaper Article

Mr. Schreiber gave an interview to Robert Fife that appeared in the *Toronto Sun* on December 2, 1995. It included the following passage:

In an exclusive interview with The Saturday Sun, Schreiber yesterday said the former Tory prime minister was “totally innocent” of RCMP allegations he accepted \$5 million in kickbacks as a result of Airbus commissions, nor was a Swiss bank account ever opened for him.

“As much as I am involved, as much as I know, as much as I have seen, Mr. Mulroney is totally innocent,” he said. “He is involved in this as much as the Pope – nowhere at all.”¹⁴⁹

Mr. Mulroney’s Account

According to Mr. Mulroney, he did not meet with Mr. Schreiber in 1995, 1996, or 1997. Mr. Mulroney testified, however, that they spoke frequently over the phone, starting in November 1995, and maintained contact throughout the period leading up to the Savoy Hotel meeting. Mr. Mulroney stated that, during that period, he and Mr. Schreiber remained on good terms “in [their] communications.”¹⁵⁰ Mr. Mulroney testified that without Mr. Schreiber’s call advising him of the LOR, he would not have known about the LOR “until later.”¹⁵¹ Mr. Mulroney testified that all the telephone calls with Mr. Schreiber during that period were about the Airbus matter and the LOR.

MR. MULRONEY’S LAWSUIT AGAINST THE CANADIAN GOVERNMENT

On November 20, 1995, Mr. Mulroney filed a lawsuit in Montreal against the Attorney General of Canada; Kimberly Prost, the lawyer with the International Assistance Group of the Department of Justice, who signed the LOR; J.P.R. Murray, the commissioner of the RCMP; and Fraser Fiegenwald, a member of the RCMP, who

was involved in the investigation that implicated Mr. Mulroney. Mr. Mulroney was seeking Can\$50 million in general and exemplary damages on the basis that certain statements in the LOR were false.¹⁵²

On April 17 and 19, 1996, counsel for the defendants conducted an examination before plea pursuant to the *Code of Civil Procedure* of Quebec.¹⁵³ Several excerpts from this examination of Mr. Mulroney relate to the relationship that existed between Mr. Mulroney and Mr. Schreiber and are fully canvassed in Chapter 8.

CORRESPONDENCE

There is no evidence of correspondence between Mr. Mulroney and Mr. Schreiber between 1995 and 1997.¹⁵⁴

Meeting at the Savoy Hotel, February 2, 1998

On February 2, 1998, Mr. Schreiber and Mr. Mulroney met at the Savoy Hotel in Zurich, Switzerland. They provided different accounts of the meeting. According to Mr. Mulroney, they spoke exclusively about the Airbus affair and Mr. Schreiber's new anti-obesity pasta business. According to Mr. Schreiber, the discussion centred on whether Mr. Schreiber was aware of any evidence of payments received by Mr. Mulroney from Mr. Schreiber. Both agreed that Mr. Mulroney had initiated the meeting.

Mr. Mulroney's Account

According to Mr. Mulroney, he met with Mr. Schreiber for lunch on February 2, 1998, in a hotel room at the Savoy Hotel. Mr. Mulroney testified that two matters were discussed at this meeting: the Airbus affair; and Mr. Schreiber's new anti-obesity pasta business.

Mr. Mulroney acknowledged that it is "probably fair" that he initiated the meeting, although he had no specific subject matter in mind when he did so. Mr. Mulroney stated that he had his office contact Mr. Schreiber to invite him to lunch during a business trip that Mr. Mulroney was taking, which included a stop in Zurich.¹⁵⁵ Mr. Mulroney noted that Paul Terrien, his former speech writer, accompanied him on this trip.

Mr. Mulroney explained that he initiated the meeting because he was to be in Zurich for the first time in years, and he had not seen Mr. Schreiber since their meeting at the Pierre Hotel in 1994. Mr. Mulroney said he wanted to meet with Mr. Schreiber because he had worked with him, Mr. Schreiber had been an objective ally in the Airbus matter, and he and Mr. Schreiber had remained in contact since Mr. Schreiber informed him about the LOR in November 1995.

Mr. Mulroney confirmed the accuracy of the document setting out his schedule for February 2, 1998. He advised that the "12:30 lunch in your room" entry in his schedule

for that day was his lunch with Mr. Schreiber. Mr. Mulroney further confirmed that, according to his schedule, he was in Zurich for two hours and 45 minutes and left the Savoy Hotel at 2:15 p.m.¹⁵⁶ The document setting out Mr. Mulroney's schedule also reflects that, when he left the Savoy Hotel, he was driven to the airport and flew to Frankfurt, Germany.¹⁵⁷

Mr. Mulroney explained that the meeting took place in his suite to allow him the opportunity to tend to an injury (a frozen shoulder) from which he was suffering at the time and to take care of other matters. The meeting lasted approximately 45 minutes to one hour. He was certain that the Airbus affair was discussed. According to Mr. Mulroney, the only other matter discussed was a new business venture of Mr. Schreiber's, involving anti-obesity pasta. Mr. Mulroney added that this new venture was Mr. Schreiber's preoccupation at the meeting. He noted it was the first time Mr. Schreiber "raised the question" of this business venture,¹⁵⁸ and that Mr. Schreiber did not ask him to do anything with regard to it, at that time.

Mr. Mulroney testified that he was not nervous during the meeting, but he was in pain because of a shoulder injury. He said the Thyssen / Bear Head matter was not discussed. Mr. Mulroney's position was that it was "untrue" that there was a discussion about "whether there was any evidence of [Mr. Mulroney's] having received money from [Mr. Schreiber]."¹⁵⁹ Contrary to what Mr. Schreiber said in his testimony before me, Mr. Mulroney testified that there was no mention of a request to Mr. Schreiber to transfer funds to Mr. Mulroney's lawyer in Geneva. Mr. Mulroney said that he had no lawyer in Geneva.

Mr. Schreiber's Account

According to Mr. Schreiber, he met alone with Mr. Mulroney at the Savoy Hotel in February 1998. Mr. Schreiber testified that the meeting was initiated by Mr. Mulroney. Mr. Schreiber noted that he had a friendly relationship with Mr. Mulroney at that time.

Mr. Schreiber initially testified that the reason for the meeting was that Mr. Mulroney was going to be in Switzerland attending an economic summit and he (Mr. Schreiber) lived in Switzerland, so they agreed to meet. Mr. Schreiber also stated that the reason for the meeting was to "speak about the whole situation around us. He was in trouble, I was in trouble. There was a lot to talk about ..."¹⁶⁰

According to Mr. Schreiber, at the meeting Mr. Mulroney asked questions about whether there was evidence of any payments received by him from Mr. Schreiber. Mr. Schreiber testified that he informed Mr. Mulroney that he had no evidence. Mr. Schreiber agreed that this subject was the main one under discussion. However, Mr. Schreiber later stated that they mainly discussed "all the mess going on with – coming from his lawsuit" and "what I was in."¹⁶¹ Mr. Schreiber also stated that he told Mr. Mulroney: "[W]hat I learned from Mr. Moores and from Fred Doucet about this

request to send money to this lawyer in Geneva ...”¹⁶² Although Mr. Schreiber was not consistent on the point, he eventually testified that, although they never discussed spaghetti, he and Mr. Mulroney could have discussed Spaghetissimo, a piece of equipment used to produce a special type of pasta that Mr. Schreiber was promoting.

Mr. Schreiber indicated that he did not ask Mr. Mulroney about what work he had performed, nor did he ask Mr. Mulroney for a statement of account. Mr. Schreiber also indicated that he did not tell Mr. Mulroney that he was in Switzerland because of an arrest warrant that had been issued against him. Mr. Schreiber guessed that the meeting lasted between one-and-a-half and one-and-three-quarters hours.

According to Mr. Schreiber, Mr. Mulroney appeared nervous and uncomfortable at the meeting.

Mr. Schreiber acknowledged that he had sent an email in 2006 to the manager of the Savoy Hotel, inquiring about the cost of the Savoy meeting despite knowing that he had not paid for either the suite or the lunch. Mr. Schreiber acknowledged that the email contained the following inaccurate information: (1) an implication that he needed the information for a tax audit; and (2) that he was unaware who had paid for the lunch. Mr. Schreiber initially said that the statement about the tax audit was a joke; however, he later indicated that he normally does not obtain information by false pretences but did so in this case because Mr. Mulroney had acquired so much information about him, and he thought it was time he did the same about Mr. Mulroney. Mr. Schreiber also stated that he wanted this information, “to have the proof who paid for this crazy lunch.”¹⁶³

Mr. Terrien’s Account

Mr. Terrien testified that he travelled with Mr. Mulroney on a trip to Europe in 1998 in conjunction with Mr. Mulroney’s acting for the World Gold Council.

Mr. Terrien testified that Mr. Mulroney was suffering from a sore arm and that his main duty was to handle Mr. Mulroney’s luggage. He indicated that the trip lasted four or five days and that they visited Paris, Rome, Frankfurt, and Zurich; and he noted that Mr. Mulroney had a prepared schedule for the trip and that meetings had been scheduled in advance. Mr. Terrien testified that he did not attend any of the meetings.

Mr. Terrien confirmed that Mr. Mulroney’s schedule on February 2, 1998, included the entry: “12:30 lunch in your [Mr. Mulroney’s] room,” and that, during the flight into Zurich, he became aware that Mr. Mulroney was going to meet with Mr. Schreiber at that time. Mr. Terrien recalled that, on the flight, Mr. Mulroney handed him a note with Mr. Schreiber’s name and phone number on it and asked him to contact Mr. Schreiber.¹⁶⁴

Mr. Terrien could not recall whether he called Mr. Schreiber to confirm a previously arranged meeting or whether he called to find out whether Mr. Schreiber

was available to meet with Mr. Mulroney. He testified that Mr. Schreiber did not seem surprised to receive the call that Mr. Mulroney was “prepared to see him.” Mr. Terrien recalled meeting Mr. Schreiber on February 2, 1998, at the entrance of the Savoy Hotel and then escorting him to a room on the second floor, where Mr. Mulroney was waiting. Mr. Terrien described the way Mr. Mulroney and Mr. Schreiber greeted each other as “cordial” and “very friendly.” According to Mr. Terrien, Mr. Mulroney then told him to come back in an hour. Mr. Terrien returned as instructed, just as the meeting ended. Mr. Terrien stated that, after the meeting, Mr. Mulroney and Mr. Schreiber both seemed to be in good spirits. He next recalled Mr. Schreiber telling him “[h]e’s a good man, take care of him.” Mr. Terrien then escorted Mr. Schreiber to either the elevator or the staircase. Mr. Terrien indicated that Mr. Mulroney did not appear “worried” or “concerned,” and that he and Mr. Mulroney did not discuss the meeting subsequently.*

Events of 1999–2000

MR. SCHREIBER’S ARREST

Mr. Schreiber’s Account

Mr. Schreiber acknowledged that he was arrested in August 1999 in Canada and detained on an international warrant in connection with allegations in Germany of fraud, tax evasion, and bribery. Mr. Schreiber acknowledged that he was aware of Mr. Mulroney’s position that Mr. Schreiber would do anything, including lying, to stay in Canada. Mr. Schreiber stated that it was not true that he would do so.¹⁶⁵

Mr. Mulroney’s Account

Mr. Mulroney said he was “stunned” by the news of Mr. Schreiber’s arrest in August 1999.¹⁶⁶ Mr. Mulroney stated that, before hearing of Mr. Schreiber’s arrest, he knew “nothing of this” and knew Mr. Schreiber only as “a successful entrepreneur.”¹⁶⁷ Mr. Mulroney agreed that, despite the presumption of innocence, Mr. Schreiber’s charges “put a different slant on things.”¹⁶⁸ Mr. Mulroney indicated that he did not communicate with Mr. Schreiber in the fall of 1999 and learned of Mr. Schreiber’s arrest from the newspaper or television. Mr. Mulroney opined that, after September 1, 1999, Mr. Schreiber was facing extradition to Germany and it became “the driving force of [Mr. Schreiber’s] existence: to do anything he could to avoid being returned to Germany ...”¹⁶⁹

* Testimony of Mr. Paul Terrien, Transcript, April 23, 2009, pp. 1977–78, 1981, 1985, 1987–88, [ENGLISH TRANSLATION], pp. 1977–79, 1983, 1985. Mr. Terrien also stated that Mr. Mulroney frequently met people in hotel rooms because they “lived in hotels.” It did not seem unusual to Mr. Terrien that Mr. Mulroney would meet someone in a hotel room. Testimony of Mr. Paul Terrien, Transcript, April 23, 2009, pp. 1983–84, [ENGLISH TRANSLATION], p. 1982.

“THE MYSTERIOUS DEALMAKER” – THE FIFTH ESTATE, OCTOBER 20, 1999

In the period leading up to the October 20, 1999, broadcast of *the fifth estate* program, “The Mysterious Dealmaker,” Mr. Mulroney called Robert Hladun (Mr. Schreiber’s lawyer) and requested that Mr. Schreiber draft a document pertaining to Mr. Mulroney’s having never solicited or received payment from Mr. Schreiber. The context of the request, the nature of the requested document, and the nature of the payments referred to are set out in Chapter 8.

On October 20, 1999, *the fifth estate* broadcast a program called “The Mysterious Dealmaker.” The program featured Mr. Schreiber’s alleged business dealings in Canada and abroad, posed questions concerning the ultimate recipients of the commission money paid to Mr. Schreiber, and discussed whether there was a link between Mr. Mulroney and Mr. Schreiber’s Swiss bank account “Britan.”¹⁷⁰

During the course of the program, a derogatory comment about Mr. Schreiber was also aired. Luc Lavoie, Mr. Mulroney’s public spokesman, stated: “Karlheinz Schreiber is the biggest fucking liar the world has ever seen. That’s what we believe.”¹⁷¹

The background to that particular statement and the context in which it was offered are canvassed in Chapter 8. What is of import here is the effect this broadcast had on the relationship between Mr. Schreiber and Mr. Mulroney.

Mr. Schreiber’s Account

Mr. Schreiber stated that this broadcast caused the first crack in his relationship with Mr. Mulroney and that his relationship with Mr. Mulroney soured afterwards. Mr. Schreiber testified that Mr. Lavoie’s remark regarding his honesty hurt him, “because it was related to the \$300,000 in the Britan account,”¹⁷² and made him angry. Mr. Schreiber stated that he expected an apology from Mr. Mulroney and was upset when none came.

Mr. Schreiber commenced an action against the CBC in connection with the airing of “The Mysterious Dealmaker.” In the statement of claim, as amended,¹⁷³ Mr. Schreiber claimed that a portion of the program was intended to mean that he was a party to criminal acts relating to illegal and improper secret commissions to himself and Brian Mulroney.¹⁷⁴ Mr. Schreiber also claimed the airing of Mr. Lavoie’s remark regarding his honesty was defamatory.¹⁷⁵ Mr. Schreiber provided additional information about this lawsuit in a letter he wrote to Mr. Mulroney, dated January 29, 2007. In this letter, Mr. Schreiber wrote: “Believing the story, I got from you through a friend, I filed a lawsuit against the CBC which I had to drop when I got to know the truth and listening to the tapes. The fee: \$50,000.”¹⁷⁶

Mr. Doucet's Account

According to Mr. Doucet, he questioned Mr. Schreiber's bona fides as a result of Mr. Schreiber's arrest and his subsequent involvement with the media. Mr. Doucet stated that he was particularly concerned about *the fifth estate* program that aired in October 1999, and about Mr. Schreiber's appearance on the program, and decided that he would subsequently memorialize his discussions with Mr. Schreiber.

In further examination, Mr. Doucet acknowledged that Mr. Schreiber had not made any comments on *the fifth estate* that aired on October 20, 1999. Mr. Doucet then explained that his concerns related to the "context of *the fifth estate* program and the reference to Schreiber."¹⁷⁷ Furthermore, Mr. Doucet indicated that his concerns relating to Mr. Schreiber's involvement with the media resulted from the conclusion he formed (based on what was in the public press) that Mr. Schreiber was leaking information off-air to *the fifth estate*.

Mr. Mulroney's Account

Mr. Mulroney acknowledged that, as a general rule, Mr. Lavoie was authorized to make public representations on his behalf. But he noted that, from time to time, Mr. Lavoie might have made a comment that he would not have. Mr. Mulroney believed that it was true that Mr. Lavoie had withdrawn his comment about Mr. Schreiber being a liar, and he stated that Mr. Lavoie was not authorized to make that comment on his behalf.

Mr. Mulroney acknowledged that, in the fall of 1999, he was informed by Mr. Doucet that Mr. Doucet sensed that Mr. Schreiber "was manoeuvring in the background to put out stories that were inconsistent with the facts, as he [Mr. Schreiber] knew them."¹⁷⁸

TERMINATION OF THE RETAINER

According to Mr. Mulroney, he heard through Mr. MacKay in December 1999 that Mr. Schreiber was musing that Mr. Mulroney had a tax problem. Mr. Mulroney testified that he did not have a tax problem – but he had the impression that Mr. Schreiber was attempting to create one. Mr. Mulroney stated that he took what he heard Mr. Schreiber had said about a tax problem as a threat and that it would be inappropriate to "continue a formal association with [Mr. Schreiber] in terms of the retainer." Mr. Mulroney identified Mr. Schreiber's asserting that he, Mr. Mulroney, had a tax problem and the arrest of Mr. Schreiber as the two reasons behind his decision to terminate his retainer with Mr. Schreiber in December 1999.

Between late December 1999 and February 4, 2000, Mr. Doucet met with Mr. Schreiber on three occasions. Mr. Mulroney was made aware of those meetings

by Mr. Doucet. The details of the meetings, the level of awareness and input of Mr. Mulroney, and the notes that Mr. Doucet made of the conversations that took place are fully canvassed in Chapter 6. It is sufficient to say that a degree of distrust appeared among the parties.

In reference to the events that unfolded in 1999, Mr. Mulroney described four events that took place in that period in connection with Mr. Schreiber to be “not the acts of a friendly man:” Mr. Schreiber’s arrest; *the fifth estate* program that aired in October 1999; Mr. Schreiber’s statement that Mr. Mulroney had an income tax problem; and Mr. Schreiber’s comment to Mr. Doucet on December 26, 1999, that Mr. Mulroney might have committed perjury.¹⁷⁹

The series of meetings between Mr. Doucet and Mr. Schreiber concluded on February 4, 2000. This last meeting occurred in Ottawa either in Mr. Doucet’s office or in an adjacent boardroom. The parties agree that Mr. Doucet brought to the meeting a document entitled “mandate”; however, significant disagreement exists over the discussions and events surrounding the document and the handwritten markups on the document itself. Details of that meeting and the mandate document are considered in Chapter 6. One matter, however, is clear from the evidence: that Mr. Doucet, with Mr. Mulroney’s approval, felt the need to bring some belated clarity to a murky arrangement.

ROYAL YORK HOTEL MEETING, MAY 23, 2000

On May 23, 2000, Mr. Schreiber and Mr. Mulroney met at the Royal York Hotel in Toronto. They gave different accounts of the meeting. By Mr. Mulroney’s account, the meeting was no more than a perfunctory hello and goodbye. Mr. Schreiber, however, said that a discussion took place about meeting in the future and an agreement that they would meet after Mr. Mulroney returned from a trip to Florida. Despite these differences, they both agreed that the meeting happened by coincidence and that this was the last time they met.

MR. MULRONEY’S INTERVIEW WITH BRIAN STEWART

In an interview that Mr. Mulroney gave to Brian Stewart of the CBC, broadcast on September 5, 2000, on *the fifth estate*, Mr. Mulroney gave the following description of his relationship with Mr. Schreiber:

Well, Mr. Schreiber was never a good friend of mine. He’s a man I knew, and I regarded him as, and he was introduced to me, and he had a reputation of accomplishment. And things have to be placed in perspective. You have to look at this now seven years earlier, and his reputation was unflawed. He had achieved a great deal in the business community, and what is sad about this is the assumption people presumed guilt on his part and the part of others. Mr. Schreiber should be presumed to be innocent.¹⁸⁰

Events and Correspondence, 2004

EUROCOPTER PROCEEDINGS

In September and November 2004, Mr. Schreiber testified over the course of 11 days before Justice Paul Bélanger in the preliminary hearing of *R v. MBB Helicopter Canada* (the Eurocopter proceedings). Several excerpts from those transcripts relate to the relationship that existed between Mr. Mulroney and Mr. Schreiber. Those portions of the Eurocopter proceedings that concern the agreement between Mr. Mulroney and Mr. Schreiber are considered in Chapter 6.

During Commission proceedings, Mr. Schreiber confirmed that his testimony from the Eurocopter proceedings concerning his relationship with Mr. Mulroney was true. Mr. Schreiber also acknowledged that, during the Eurocopter proceedings, he had testified that he did not have contact often with Mr. Mulroney while he was prime minister.

Mr. Schreiber confirmed that he did not state in the Eurocopter proceedings that he had met with Mr. Mulroney at Harrington Lake, nor did he disclose all the other meetings he had with Mr. Mulroney while he was prime minister. Mr. Schreiber could not recall why he would not have disclosed this information and noted that it was common knowledge that he was meeting with Mr. Mulroney all the time.

CORRESPONDENCE

Mr. Schreiber wrote a series of unanswered letters to Mr. Mulroney starting in January 2004. In those letters, Mr. Schreiber requested a meeting with Mr. Mulroney, requested Mr. Mulroney's support for his pasta venture, and complimented Mr. Mulroney on the speech he gave at Ronald Reagan's funeral. Some of the letters that are of particular interest are canvassed below.

On January 14, 2004, Mr. Schreiber wrote a letter to Mr. Mulroney in which he stated that he had learned “[f]rom our friend in Nova Scotia [Mr. MacKay]” that Mr. Mulroney was intending to meet with him. In his letter, Mr. Schreiber suggested that he was interested in meeting with Mr. Mulroney and concluded by asking Mr. Mulroney to forward convenient meeting dates.¹⁸¹

Mr. Schreiber confirmed that he wrote this letter and explained that Mr. MacKay informed him that Mr. Mulroney “thought we should meet now and talk.”¹⁸² Mr. Schreiber noted that Mr. Mulroney did not respond to this letter.

Mr. MacKay testified that he might have approached Mr. Schreiber about a possible meeting with Mr. Mulroney in that period. In providing context, Mr. MacKay stated that he recalled, with some uncertainty, that Mr. Mulroney was musing that perhaps he could meet with Mr. Schreiber for lunch.

In a letter dated July 2004, Mr. Schreiber revealed that the George Brown Chef School and Reto's Restaurant Systems International Inc. had started a pasta demonstration project in Toronto.¹⁸³ Mr. Schreiber testified that his objective in writing this letter was to "activate" Mr. Mulroney.¹⁸⁴ He received no response from Mr. Mulroney.

On July 22, 2004, Mr. Schreiber wrote a letter to Mr. Mulroney referring to Mr. Mulroney's speech at Ronald Reagan's funeral.¹⁸⁵ Mr. Schreiber acknowledged that this was a very flattering letter.

Events and Correspondence, 2006

THE FIFTH ESTATE — FEBRUARY 8, 2006

Mr. Schreiber confirmed that he appeared on *the fifth estate* program that aired on February 8, 2006. On the program, Mr. Schreiber spoke about meeting with Mr. Mulroney at Harrington Lake and subsequently making cash payments to Mr. Mulroney in hotel rooms. He later laughed at the notion articulated by Linden MacIntyre, the host of *the fifth estate*, that the services performed by Mr. Mulroney included helping Mr. Schreiber with his pasta concern. When questioned during the Commission proceedings, Mr. Schreiber acknowledged that he was laughing because he never hired Mr. Mulroney to work in connection with his pasta business. When asked why he told the judge at the Eurocopter proceedings that he had hired Mr. Mulroney in connection with his pasta business, Mr. Schreiber stated: "This was the first activity in '94, Mr. Wolson. Not '93, in '94 when I received from him the brochure. And I have told you this now three or four times."¹⁸⁶

CORRESPONDENCE BETWEEN MR. SCHREIBER AND MINISTERS

Beginning in 2006, Mr. Schreiber wrote a number of letters to ministers in the Conservative government, including Prime Minister Stephen Harper and the minister of justice, Vic Toews.¹⁸⁷ In Mr. Schreiber's initial correspondence, he indicated that a "Political Justice Scandal" without precedence in Canadian history had been propagated against Mr. Mulroney and him by members of the former Liberal government. Mr. Schreiber asserted that certain government officials were engaged in an ongoing effort to ensure his removal from Canada in order to halt his lawsuit in Alberta against Allan Rock, the former attorney general of Canada. Mr. Schreiber claimed that these officials wanted him extradited from Canada to prevent him from revealing, through his lawsuit, scandalous information about the former Liberal government in its treatment of him and Mr. Mulroney in connection with the Airbus affair.

Mr. Schreiber also asked repeatedly for the establishment of a public inquiry¹⁸⁸ and accused Mr. Harper of not calling one on account of his “important adviser,” Mr. Mulroney.¹⁸⁹ The letters continued up to and during the House of Commons Ethics Committee hearings. During this period, Mr. Schreiber also accused the Conservative government of improperly trying to extradite him in order to conceal damaging information.¹⁹⁰

The matter of Mr. Schreiber’s correspondence to Mr. Harper is discussed in detail in Chapter 10, which deals with the prime minister’s correspondence and whether the Privy Council Office should have adopted different procedures in handling Mr. Schreiber’s letter to Prime Minister Harper of March 29, 2007. There is evidence before me, which I accept, as to the handling of mail addressed to the prime minister. As discussed in Chapter 10, I have concluded that the March 29, 2007, letter was not passed on to Prime Minister Harper.

CORRESPONDENCE FROM MR. SCHREIBER TO MR. MULRONEY

Although Mr. Schreiber did not write to Mr. Mulroney in 2005, Mr. Schreiber sent a series of letters to Mr. Mulroney throughout 2006. He received no replies from Mr. Mulroney. Among these letters, Mr. Schreiber mentioned for the first time the existence of a political justice scandal (a topic that is mentioned in many of Mr. Schreiber’s subsequent letters), informed Mr. Mulroney that he was the best advocate that Mr. Schreiber could have ever retained, and apologized for statements he made on *the fifth estate* concerning their business relationship.

On June 30, 2006, Mr. Schreiber wrote a one-page letter to Mr. Mulroney listing six documents that he enclosed for Mr. Mulroney’s interest. Two of the documents listed included the words “Political Justice Scandal.”¹⁹¹ Mr. Schreiber acknowledged that he was starting to talk about political justice scandals, and that from then on he used the words “political justice scandal” in his letters to Mr. Mulroney.¹⁹²

Letter of July 20, 2006

Mr. Schreiber’s Account

On July 20, 2006, Mr. Schreiber wrote a letter of apology to Mr. Mulroney, based on a draft provided by Mr. MacKay, for making statements on *the fifth estate* concerning his professional relationship with Mr. Mulroney. Mr. Schreiber testified that Mr. MacKay had informed him that Mr. Mulroney was ready to help Mr. Schreiber with his affairs.

Mr. Schreiber testified that he was hoping this letter would help enlist Mr. Mulroney’s support for the commissioning of a public inquiry to expose those people responsible for the Airbus affair. Mr. Schreiber noted that Mr. Mulroney had told him for years that an inquiry should be held.

Mr. Schreiber stated that Mr. Mulroney had requested the letter (through Mr. MacKay) in order to be able to show Prime Minister Harper that Mr. Mulroney and Mr. Schreiber were on good terms and that Mr. Schreiber was not an enemy of the Conservative Party.

In his evidence before me, Mr. Schreiber confirmed the statements he made in his interview with Commission counsel that three points in his July 20, 2006, letter were untrue: that he received a satisfactory explanation about the misunderstanding on Bear Head; that Mr. Mulroney was the best “advocate he could have retained”;¹⁹³ and that he wished to apologize. He maintained that the rest of the letter was truthful and accurate.

Mr. Schreiber acknowledged that he signed the July 20, 2006, letter knowing it was only partly true and that he wanted Mr. Mulroney to go to see Prime Minister Harper with that letter.

Mr. Schreiber stated that he subsequently learned from Mr. MacKay that the letter was well received but that nothing could be done until the Supreme Court of Canada ruled on his extradition appeal. Mr. Schreiber went on to state that, subsequent to the ruling by the Supreme Court of Canada, the decision on whether he would be sent to Germany to stand trial there would be made by the minister of justice, Vic Toews.

Mr. Mulroney’s Account

According to Mr. Mulroney, he was not involved directly or indirectly in procuring or initiating the writing of this letter from Mr. Schreiber.¹⁹⁴

Mr. MacKay’s Account

Mr. MacKay stated that he provided Mr. Schreiber with a draft of the letter in an email after Mr. Schreiber had asked him what he might write to Mr. Mulroney to try to repair their relationship.¹⁹⁵ In further explanation, Mr. MacKay testified that, during this period, Mr. Schreiber continued to be very upset with Mr. Mulroney because he felt he was not receiving enough support from Mr. Mulroney over his difficulties. Mr. MacKay explained that, when he conveyed Mr. Schreiber’s views to Mr. Mulroney, Mr. MacKay came to the conclusion that “perhaps some sort of apology might clear the air and, at least, if Mr. Mulroney wished to do so, he could do something to support Mr. Schreiber, if he thought it was appropriate.”¹⁹⁶

Mr. MacKay acknowledged that the factual information in his email came from Mr. Schreiber. In particular, Mr. MacKay confirmed that he wrote the sections of the letter concerning *the fifth estate* because he understood from Mr. Schreiber that the program had presented a misleading and unfair characterization of the relationship between Mr. Schreiber and Mr. Mulroney.

With reference to the phrase in the email, “May I state for the record, that my testimony under oath in prior legal proceedings is the only correct description of our

business arrangement,” Mr. MacKay confirmed that Mr. Schreiber had said this in reference to the Eurocopter proceedings.¹⁹⁷

With reference to the phrase in the email, “You were the best advocate I could have ever retained,” Mr. MacKay stated they were his words, not Mr. Schreiber’s, but remarked that he felt it was appropriate to include the sentiment because of “some of the very kind things that Mr. Schreiber had said in the past about Mr. Mulroney.”¹⁹⁸

Letters of August 4 and August 9, 2006

On August 4, 2006, Mr. Schreiber wrote a one-page letter to Mr. Mulroney that enclosed letters that Mr. Schreiber had written to Prime Minister Harper, Foreign Affairs Minister Peter MacKay, and Kevin Sorenson (the member of parliament for Crowfoot, Alberta) regarding the Airbus affair – described by Mr. Schreiber as a “Political Justice Scandal.”¹⁹⁹ Mr. Schreiber acknowledged in his testimony that Mr. Mulroney did not ask for this letter.

On August 9, 2006, Mr. Schreiber wrote a letter to Mr. Mulroney. In the letter, Mr. Schreiber wrote that Kimberly Prost, Allan Rock, the RCMP, and Stevie Cameron were all part of a conspiracy against him, Mr. Mulroney, Frank Moores, and Gary Ouellet. (Frank Moores and Gary Ouellet, both now deceased, were principals in the lobbying firm GCI.)²⁰⁰

Mr. Schreiber testified that he was not receiving any responses to his letters and agreed that his goal (as of January 2007) in sending these letters was to enlist Mr. Mulroney’s help in fighting a vendetta and political justice scandal that involved both of them. Mr. Schreiber noted that he and Mr. Mulroney had agreed in 1997 to “fight this thing.”²⁰¹

Events and Correspondence, 2007

MR. SCHREIBER’S LAWSUIT AGAINST MR. MULRONEY

Mr. Schreiber commenced an action in Ontario against Mr. Mulroney by way of a statement of claim filed on March 22, 2007.²⁰² In the statement of claim, as amended, Mr. Schreiber claimed repayment of \$300,000 of an “advance for services to be rendered made in cash on” July 27, 1993, November 11, 1993,* and December 8, 1994.²⁰³

Mr. Schreiber testified that he commenced this lawsuit because he wanted Mr. Mulroney to testify, and he wanted his money back because Mr. Mulroney had done nothing for him. Mr. Schreiber repeatedly denied the suggestion that he sued Mr. Mulroney in order to bring about a public inquiry so as to delay his extradition from Canada.²⁰⁴

* As I have concluded in Chapter 6, the cash payments were made on August 27, 1993, December 18, 1993, and December 8, 1994. No cash payment was made on July 27, 1993, or November 11, 1993, as was alleged in Mr. Schreiber’s statement of claim.

Affidavit

Mr. Schreiber confirmed that he swore an affidavit dated November 7, 2007, in connection with a motion filed by Mr. Mulroney for dismissal of his lawsuit on the basis that Ontario did not have jurisdiction to deal with the matter.

With reference to his affidavit, Mr. Schreiber did not disagree with the suggestion that he included references to the Savoy Hotel meeting in order to help get a public inquiry launched.²⁰⁵ Later in Mr. Schreiber's evidence, he acknowledged that he would have done "anything" in his quest for a public inquiry.²⁰⁶ Mr. Schreiber also acknowledged that he allowed his lawyers to give his affidavit to the media.

Mr. Schreiber testified that Mr. Mulroney was ultimately successful with his motion and had his lawsuit dismissed from Ontario for lack of jurisdiction. Mr. Schreiber also confirmed that he subsequently filed an action against Mr. Mulroney in Quebec on June 11, 2008 (the eve of the appointment of this Inquiry). Mr. Schreiber indicated that he later abandoned the Quebec action because he did not want to undermine the work of the Commission by permitting Mr. Mulroney to cross-examine him in public before the start of the Commission's proceedings.

THE FIFTH ESTATE – OCTOBER 31, 2007

On October 31, 2007, *the fifth estate* aired a program that examined the relationship between Mr. Schreiber and Mr. Mulroney over the years. Interviewed by the program, Mr. Schreiber detailed his account of the Savoy Hotel meeting. Mr. Schreiber acknowledged in his testimony before the Commission that this was the first time he informed the media about that meeting.²⁰⁷ On November 2, 2007, he gave an interview to the CBC's *As It Happens*, in which he discussed the Savoy Hotel meeting.

ETHICS COMMITTEE

In late 2007 and early 2008, the House of Commons Standing Committee on Access to Information, Privacy and Ethics (the Ethics Committee) held hearings concerning Mr. Mulroney's relationship with Mr. Schreiber. Mr. Schreiber and Mr. Mulroney both testified at the hearings of the Ethics Committee.

In Mr. Schreiber's interview with Commission counsel, he stated that he "became angry with Mr. Mulroney for the first time when Norman Spector testified at the Ethics Committee that Mr. Mulroney had 'killed' the project."²⁰⁸ On being questioned about whether this statement was accurate, Mr. Schreiber stated that he first became aware of this information (that Mr. Mulroney killed the project) in 1995, from the letter of request—but he explained that, at that time, he did not believe it. Mr. Schreiber explained that he could not believe it because Mr. Mulroney never informed him of this decision; Mr. Mulroney continued to meet with him; and Mr. MacKay and Mr. Doucet were seemingly also unaware of this decision.²⁰⁹

CORRESPONDENCE FROM MR. SCHREIBER TO MR. MULRONEY

Mr. Schreiber continued to write to Mr. Mulroney in 2007. After his January 19, 2007, letter, in which Mr. Mulroney's support was sought, his letters took on a distinctly antagonistic tone. Mr. Schreiber, for the first time, demanded from Mr. Mulroney the return of the retainer payments; strongly recommended that Mr. Mulroney request a public inquiry; named Mr. Mulroney as part of the conspiracy responsible for his extradition proceedings; threatened to disclose damaging information; and, finally, asked him to speak to Robert Nicholson, now minister of justice, on his behalf.

On February 20, 2007, Mr. Schreiber wrote a letter to Mr. Mulroney demanding payment of \$485,000 (return of the payments totalling \$300,000 plus 5 percent interest from January 1, 1995, to February 28, 2005).²¹⁰ According to Mr. Schreiber, Mr. Mulroney had refused to meet with Mr. MacKay and Michael Cochrane, both investors in Mr. Schreiber's pasta business, to discuss the pasta venture, and Mr. Schreiber realized that Mr. Mulroney no longer intended to fulfill his part of their agreement.²¹¹

Mr. Schreiber stated that he eventually instructed his counsel to commence an action in Ontario against Mr. Mulroney because no services had been provided and Mr. Mulroney refused to do anything further.²¹²

Mr. Mulroney confirmed that Mr. Schreiber's letter of February 20, 2007, was the first demand for the return of the \$300,000.²¹³ Mr. Mulroney agreed that he did not reply to Mr. Schreiber to say he had worked for the money and to remind him of the trips abroad. Mr. Mulroney testified that he did not respond because the context of the letter demonstrated to him that Mr. Schreiber's efforts were wholly concentrated on avoiding extradition.²¹⁴

Mr. Mulroney maintained that there was nothing improper about any of his work. He noted in this regard that Mr. Schreiber had written him a letter dated July 20, 2006, which indicated that Mr. Schreiber was honoured to have had Mr. Mulroney as an advocate.²¹⁵ It was the first time in 15 years that this type of action had been initiated, so Mr. Mulroney did not feel it was appropriate to respond to Mr. Schreiber.

THREAT OF DISCLOSURE

On May 8, 2007, Mr. Schreiber sent Mr. Mulroney a letter that referred to Mr. Mulroney, Mr. Harper, Mr. Nicholson, and the International Assistance Group (IAG) of the Department of Justice as being a part of a cover-up and conspiracy responsible for his extradition proceedings. The letter also indicated that it was the last warning Mr. Schreiber prepared to give and that he was prepared to disclose

that you received payments from GCI, Frank Moores, Fred Doucet, Gary Ouellet, that I was asked by Fred Doucet to transfer funds to your lawyer in Geneva, (Airbus) what the reason was for your trip to Zuerich [sic] in 1998, that you asked me through

my lawyers to commit perjury to protect you, that you supported fraud related to the Thyssen project and more ... It is in your hands what is going to happen. My patience comes to an end.”²¹⁶

Mr. Schreiber confirmed that this was the first letter he sent to Mr. Mulroney that alleged that Mr. Mulroney was part of a political conspiracy. Mr. Schreiber acknowledged that he threatened Mr. Mulroney in this letter – Mr. Schreiber’s own words being: “I threatened him because this was my last warning.”²¹⁷ Mr. Schreiber indicated that, at the time he sent this letter, he was upset and angry. He explained that Mr. Mulroney had always told him that they would fight this together and Mr. Mulroney failed to do so after the Conservative government took power in 2006.

Mr. Mulroney referred to Mr. Schreiber’s letter as the “letter of a blackmailer”²¹⁸ and noted that Mr. Schreiber was clearly trying to extort him into intervening in his extradition case. Mr. Mulroney stated that he was “ready to pay that price and much more, rather than succumb to the demands of a blackmailer.”²¹⁹ Mr. Mulroney noted that the allegations contained in Mr. Schreiber’s letter are false and that he turned the letter over to his lawyer.²²⁰

William Kaplan’s Interviews of Mr. Mulroney and Mr. Schreiber

INTERVIEWS OF MR. MULRONEY

Lawyer and legal historian William Kaplan conducted several interviews of Mr. Mulroney in the course of his work on his two books, *Presumed Guilty: Brian Mulroney, the Airbus Affair and the Government of Canada* (1998); and *A Secret Trial: Brian Mulroney, Stevie Cameron, and the Public Trust* (2004). In these interviews, Mr. Mulroney made several statements about his relationship with Mr. Schreiber.

With reference to his interview of Mr. Mulroney on December 2, 1997, Mr. Kaplan confirmed Mr. Mulroney told him that his relationship with Mr. Schreiber was only peripheral. In Mr. Mulroney’s testimony before me, he acknowledged that he made this statement and confirmed its accuracy. Further, Mr. Mulroney contrasted this description of his relationship with Mr. Schreiber with his relationships with family and life-long friends. Mr. Mulroney acknowledged that, in describing his relationship with Mr. Schreiber to Mr. Kaplan, he could have used a more descriptive phrase but noted that this statement was not intended to be “pejorative or misleading.”²²¹

With reference to his interview of Mr. Mulroney of January 9, 2002, Mr. Kaplan confirmed that Mr. Mulroney stated that he considered being introduced to Mr. Schreiber by Elmer MacKay and Fred Doucet “one of the biggest mistakes that I regret the most.”²²² Mr. Kaplan also confirmed that Mr. Mulroney stated that he knew Mr. Schreiber “peripherally.”²²³ According to Mr. Kaplan’s interview notes,

Mr. Mulroney understood Mr. Schreiber was upset on learning from Mr. Kaplan's first book that Mr. Mulroney had cancelled the contract that would have made him rich.²²⁴ In his interview notes, Mr. Kaplan further attributed the following to Mr. Mulroney: "I have known him for years but [Karlheinz] Schreiber clearly does not see me as a friend."²²⁵

With reference to his interview of Mr. Mulroney of December 4, 2002, Mr. Kaplan confirmed that Mr. Mulroney stated that he "laments" the day he met Mr. Schreiber, that he initially believed Mr. Schreiber to be a reputable businessman from Alberta, and that he "wishes Schreiber well."²²⁶

With reference to his interview of Mr. Mulroney of October 24, 2003, Mr. Kaplan confirmed that Mr. Mulroney stated that he did not want to say or do anything that would affect Schreiber's extradition and that he did not think Mr. Schreiber should wind up in a German court.²²⁷

INTERVIEWS OF MR. SCHREIBER

Mr. Kaplan conducted several interviews of Mr. Schreiber in the course of his work and research on *A Secret Trial*. In the course of these interviews, Mr. Schreiber made several statements with respect to his relationship with Mr. Mulroney.²²⁸

With reference to his interview of April 29, 2002, Mr. Kaplan confirmed that Mr. Schreiber told him that "he had the goods on Mulroney, Robert Fowler [former deputy minister of national defence], and others."²²⁹ As well, Mr. Schreiber indicated that he had never bribed anybody.²³⁰ According to Mr. Kaplan's interview notes, "[Mr. Schreiber] referred several times to \$40 million dollars being spent in Canada but insisted that there was never any bribes [sic]."²³¹ According to Mr. Kaplan, Mr. Schreiber stated that he wanted to sue the Mulroney government for the cancellation of the Bear Head contract; and also, Mr. Schreiber had checked with Mr. Mulroney about whether he should co-operate with Mr. Kaplan and was told by Mr. Mulroney not to speak with Mr. Kaplan because Mr. Kaplan was unreliable.²³²

With reference to his interview of Mr. Schreiber of March 6, 2004, Mr. Kaplan confirmed the content of his interview notes: Mr. Schreiber stated that

he could not understand why [Mr. Mulroney] was so self-destructive. All he had to do was say it was a loan. [Mr. Mulroney] needed money at the time, he was trying to sell his furniture and all he had to do was say that [Mr. Schreiber] gave him the money for his future help on [Bear Head].

According to Mr. Kaplan's notes, Mr. Schreiber also had the idea that Mr. Mulroney was to spearhead the peacekeeping part of the initiative and could have just said that as well.²³³

With reference to his March 31, 2004, interview of Mr. Schreiber, Mr. Kaplan confirmed that Mr. Schreiber stated that, "[a]fter all the years of

investigation, there [was] no proof of any bribes.” According to Mr. Kaplan, Mr. Schreiber also stated that he was introduced to Mr. Mulroney when he was the president of the Iron Ore Company of Canada at the request of Mr. Strauss through Walter Wolf and Michel Cogger, and from then on he supported Mr. Mulroney’s political activities; Mr. Mulroney never told him to give up on the Bear Head Project; Mr. Schreiber “didn’t care too much” about Mr. Mulroney’s evidence on his examination before plea concerning their relationship because he thought Mr. Mulroney “must have a reason”; he liked Mr. Mulroney from the beginning, when they met at the Ritz-Carlton in Montreal, and, regardless of what Mr. Mulroney might do or say, he forgave him because of what he did for the reunification of Germany; Mr. Mulroney took money from him, and “was lying like hell and committing perjury”; he would help Mr. Mulroney if he called him because of what he did for Germany; and he was appalled by Mr. Mulroney’s financial shape and would have done whatever he could to help.²³⁴

Analysis of Evidence and Findings

As noted, the question I must address in this chapter is the first question in the Terms of Reference: “What were the business and financial dealings between Mr. Schreiber and Mr. Mulroney?” This is the overarching question of the whole Inquiry, as reflected by the questions that follow in the Terms of Reference.

Before analyzing the evidence regarding the rather lengthy relationship between Mr. Schreiber and Mr. Mulroney, however, it is important to reiterate the mandate of this Commission. In my opening statement of October 2, 2008, I summarized what I viewed to be the Commission’s mandate:

Having reviewed the Terms of Reference carefully, I have concluded that this Inquiry is to focus upon the financial and business dealings of Messrs. Mulroney and Schreiber in relation to the Bear Head Project and the payments made to Mr. Mulroney by Mr. Schreiber in 1993 and 1994.

To put the business and financial dealings of Mr. Schreiber and Mr. Mulroney into context, I discussed the history of the Bear Head Project in the preceding chapter of this Report.

Having completed a review of the evidence as it relates to the relationship between Mr. Schreiber and Mr. Mulroney, I propose now to turn to a consideration of that evidence and then to respond to Question 1 of the Terms of Reference.

Although I have considered all the evidence regarding the lengthy relationship between Mr. Schreiber and Mr. Mulroney, I directed most of my attention to the testimony of the two men.

The initial meeting between Mr. Schreiber and Mr. Mulroney occurred in the early 1980s, before Mr. Mulroney became prime minister. I believe that Mr. Schreiber’s

ability to be in contact with or to gain access to Mr. Mulroney was facilitated by Elmer MacKay or Fred Doucet, or by both of them.

Despite what Mr. Schreiber had to say about his relationship with Mr. Mulroney before Mr. Mulroney's becoming prime minister, I do not accept that it was nearly as close as he would have me believe. When Mr. Schreiber was testifying before me, I was struck by his proclivity for exaggeration when it came to describing the nature of his relationships with people, particularly those in positions of influence and power. For example, Mr. Schreiber was forced to admit, despite his initial assertion to the contrary, that he did not have a business relationship with either Bill Gates or President Bill Clinton.

If Mr. Schreiber met Mr. Mulroney while Mr. Mulroney was campaigning for leadership of the Progressive Conservative Party – before he became the prime minister – I can accept that any such meeting was brief and forgettable, at least as far as Mr. Mulroney was concerned.

There is no evidence on which I can rely to support Mr. Schreiber's testimony that he donated \$50,000 to assist Mr. Mulroney in his quest to become leader of the PC Party. I am unable to rely on Mr. Schreiber's evidence in that regard, in light of the fact that it was self-contradictory.

After assuming the leadership of the PC Party, Mr. Mulroney served as leader of the official opposition in the House of Commons for a little more than a year before becoming prime minister, following the general election of September 4, 1984. During his tenure as leader of the official opposition, there was contact between Mr. Schreiber and Mr. Mulroney. However, based on the evidence before me, it is my view that the contact was minimal and far less significant than Mr. Schreiber would have me believe.

I am satisfied that, whatever relationship existed between Mr. Schreiber and Mr. Mulroney while Mr. Mulroney was the leader of the official opposition, it was not a business relationship; and that, as stated above, contact between the two men was infrequent.

Mr. Mulroney served as prime minister of Canada from September 1984 until June 1993. The evidence discloses that, during the early years of Mr. Mulroney's tenure as prime minister, meetings were held, again infrequently and not as described by Mr. Schreiber, between Mr. Schreiber and him. Those meetings always took place in the company of one or more other persons.

However, as time passed and events evolved, Mr. Schreiber gained an increasing amount of access to Mr. Mulroney. As the frequency of meetings with Mr. Mulroney increased, Mr. Schreiber came to believe that he and Mr. Mulroney had become friends. When he testified before me, Mr. Schreiber portrayed the relationship between him and Mr. Mulroney as one of close friendship.

Although Mr. Schreiber is entitled to believe whatever he wants about the nature of his relationship with Mr. Mulroney, it is clear to me, based on the testimony I heard, that Mr. Mulroney did not share that belief. Nor do I. To put it bluntly, I hold the view that Mr. Schreiber is deluding himself if he believes that Mr. Mulroney was ever a close friend.

Notwithstanding the lack of friendship, Mr. Schreiber had a remarkable degree of access to Mr. Mulroney. I am satisfied that, ultimately, and always with the help of Mr. MacKay and Mr. Doucet, Mr. Schreiber could get to see Prime Minister Mulroney just about whenever he wished to do so.

I have scrutinized the evidence regarding the relationship between Mr. Schreiber and Mr. Mulroney to determine if there was anything untoward about it during the time that Mr. Mulroney served as prime minister of Canada. My examination of that evidence discloses nothing that causes me concern so far as the relationship of the two men goes, except for what I view as the excessive amount of access granted to Mr. Schreiber.

The evidence discloses, for example, that between December 1987 and November 1992, at least nine documented meetings took place between Mr. Schreiber and Mr. Mulroney. Mr. Schreiber was able to meet with Mr. Mulroney twice during Mr. Mulroney's final month in office: once on June 3, 1993, and then on June 23, 1993. In Chapter 6, I discuss in detail the meeting between the two held on June 23, 1993. It is sufficient to say here that, at the conclusion of the June 23 meeting, Mr. Mulroney let Mr. Schreiber know that Mr. Schreiber should feel free to contact him in the future.

It is important to put all the meetings into context. During Mr. Mulroney's tenure as prime minister, Mr. Schreiber was attempting to influence the Government of Canada to accept proposals on behalf of Thyssen, through Bear Head Industries, to establish a plant that would manufacture military vehicles in Canada. It is also important to remember that it was Fred Doucet who, as a lobbyist on behalf of Mr. Schreiber, arranged a number of the meetings concerning the Bear Head Project with Mr. Mulroney, and that Mr. Doucet accompanied Mr. Schreiber to at least some of those meetings. Remember as well that, for Mr. Schreiber, the financial stakes were high. He stood to gain a considerable commission, estimated by him at \$1.8 billion, had the project come to fruition and Thyssen been able to sell its military vehicles in Canada and in the international market.

Of concern to me is the fact that Mr. Doucet registered as a lobbyist on behalf of the Bear Head Project shortly following his departure from government in 1988. Notwithstanding the fact that Mr. Mulroney was aware that Mr. Doucet was working for Mr. Schreiber, lobbying on behalf of the Bear Head Project, the evidence is clear that Mr. Doucet still had the ear of the prime minister and was able to arrange for access by Mr. Schreiber to Mr. Mulroney whenever Mr. Schreiber wanted to meet with the prime minister.

I believe that Mr. Mulroney ought to have been far more circumspect in his dealings with Mr. Doucet, in light of their long-standing relationship, knowing that Mr. Doucet was actively lobbying on behalf of Mr. Schreiber and the Bear Head Project.

Initially, at least, the plant was to be located on the Bear Head Peninsula on Cape Breton Island in Nova Scotia, where the economy had been devastated and where unemployment was a very serious problem. From a political perspective, anything the government could do to assist the ailing economy and create jobs would have found favour with the electorate.

The evidence I heard and read convinces me that, during the same period and despite whatever political support existed for the project, those at the most senior levels of the federal bureaucracy and the military, for understandable, well-documented reasons (set out in Chapter 4), were opposed to the Thyssen / Bear Head proposals.

Mr. Schreiber was well aware of the strong opposition he was facing. He had to know that, without political support, especially support from the highest office in the land – the Prime Minister's Office – the various proposals he advanced from time to time were doomed to fail. It comes then as no surprise to me that Mr. Schreiber would want to continue to have ongoing access to Mr. Mulroney for the purpose of ensuring that the project had the prime minister's support despite opposition from the bureaucrats.

Outside of an understandable desire to succeed in gaining the establishment of an industry that would create jobs on Cape Breton Island initially, and elsewhere later on, I am unable to discern what motivated Mr. MacKay to use his influence with Mr. Mulroney in getting Mr. Schreiber into the prime minister's office to meet with him, particularly after the location of the proposed project moved to Montreal. I am confident that Mr. Doucet, also a native Nova Scotian, was also motivated by the desire to create jobs in Cape Breton.

However, Mr. Doucet had another motive for seeing the project succeed. I have already referred to Mr. Doucet's financial interest as a lobbyist. I heard and read evidence that Mr. Schreiber arranged to pay Mr. Doucet \$90,000 within a few weeks of Mr. Doucet's resignation from government. That payment took place on the signing of the understanding in principle (UIP) by various ministers in the government led by Mr. Mulroney.

Senator Murray brought to the Commission's attention documentary evidence that Mr. Doucet contacted him on a number of occasions in 1987 while Mr. Doucet held the position of chair of the Committee for International Summits and Senator Murray was the minister responsible for Atlantic Canada Opportunities Agency (ACOA). Senator Murray confirmed his diary entries for June 15, 1987, that Mr. Doucet told him that the "PM strongly endorses Thyssen project" and he (Senator Murray) should speak to Perrin Beatty, the minister of national defence, to "[t]ell him it's a must."²³⁸

The following year, 1988, Senator Murray was involved in an official capacity in moving the negotiations of the UIP forward. It was he who sent to Mr. Schreiber, on

behalf of the government, the UIP to be signed by the representatives of the Government of Canada and Mr. Schreiber as chairman of Bear Head Industries.²³⁶ In his testimony, Senator Murray confirmed that, based on his diary notes, Mr. Doucet contacted him about the UIP in August and September 1988 as a lobbyist for Bear Head Industries to tell him there was a need to get the three ministers to sign the UIP. In my view, Senator Murray's efforts to further the finalization of the UIP were not influenced by Mr. Doucet's contacts. The one surviving signatory to the UIP, Perrin Beatty, confirmed in his testimony that he never heard from Mr. Doucet, nor was he pressured by the PMO or the prime minister.

It is conceivable that Mr. Doucet told Mr. Schreiber that he was doing more than he actually did in order to be paid when the UIP was signed. However, I am unable to conclude that Mr. Doucet played a role in obtaining the signatures of any of the ministers on the UIP, which was, in my view, a totally worthless document because it committed the Government of Canada to absolutely nothing.

Whatever motivated Mr. MacKay and Mr. Doucet, it must be painfully obvious to them now that, as an unintended consequence of their activities, which resulted in Mr. Schreiber's having almost unlimited access to Mr. Mulroney while he was the prime minister, great harm has been done to Mr. Mulroney. The harm done was openly admitted by Mr. Mulroney when he testified before me.

I am unable to conclude that all the blame for that harm can be laid on Mr. MacKay and Mr. Doucet as a consequence of their arranging the access that I deem to be excessive. Mr. Mulroney, who is an intelligent, sophisticated businessperson, had to recognize that Mr. Schreiber was attempting to manipulate him with the objective of having him use his power and influence as prime minister to move the Bear Head Project forward despite advice to the contrary that Mr. Mulroney was receiving from such trusted advisers as Paul Tellier.

Even after he says he "killed" the project in 1991, Mr. Mulroney permitted Mr. Schreiber to have continued access to him. In my opinion, that is why the Bear Head Project, albeit proposed for locations other than the Bear Head Peninsula, refused to die and, like Phoenix, kept rising from the ashes.

In my view, Mr. Mulroney was responsible for permitting Mr. Schreiber to meet with him whenever Mr. Schreiber desired to do so. I respectfully suggest that Mr. Mulroney could simply have said no to Mr. MacKay and Mr. Doucet on those occasions when they attempted to arrange meetings on behalf of Mr. Schreiber.

I also hasten to observe that, with the degree of access granted to Mr. Schreiber and the number of meetings he had with Mr. Mulroney over the years, it can hardly be said that Mr. Mulroney's knowledge of Mr. Schreiber was merely peripheral. That simply is not in accord with the evidence I heard. Although the two men were not friends, in my view their relationship was much more than peripheral.

Mr. Mulroney resigned as prime minister on June 24, 1993. His resignation, however, did not end his relationship with Mr. Schreiber.

Once again, with the assistance of Fred Doucet, approximately two months after Mr. Mulroney's departure from the prime minister's office Mr. Schreiber met with him at the hotel at the airport at Mirabel, Quebec.

As I conclude in Chapter 6, that meeting culminated in Mr. Schreiber and Mr. Mulroney entering into a commercial agreement, international in scope, whereby Mr. Schreiber retained Mr. Mulroney's services for the purpose of advancing his business interests and those of Thyssen / Bear Head. During the course of the Mirabel meeting, Mr. Schreiber paid Mr. Mulroney in cash in what turned out to be the first of three instalments pursuant to the retainer.

I propose to say no more in this chapter about the agreement between the two men or what transpired thereafter. I direct the reader's attention to Chapter 6, which deals in great detail with the agreement, and to Chapter 7, where I discuss why the payments were all in cash, the source of the cash, and what happened to it. In Chapter 8, I discuss the issue of disclosure or, perhaps more appropriately, non-disclosure of the transaction on the part of Mr. Mulroney.

On the basis of the evidence before me, the answer to the general question about the business and financial dealings between Mr. Schreiber and Mr. Mulroney must, of necessity, also be relatively general in nature.

FINDINGS

I find that Mr. Schreiber was a man with whom Mr. Mulroney had met numerous times on official business, particularly over the latter years of his tenure as prime minister of Canada. I find that nothing inappropriate occurred during the meetings that Mr. Schreiber had with Mr. Mulroney during Mr. Mulroney's tenure as prime minister.

However, in consideration of the evidence as a whole, including the evidence of Paul Tellier and Norman Spector, I find that the degree of access to Mr. Mulroney enjoyed by Mr. Schreiber was, in and of itself, both excessive and inappropriate. To Mr. Mulroney's knowledge, Mr. Schreiber's sole objective in meeting with him as prime minister was to advance the cause of the Bear Head Project. At no time during this period was Mr. Schreiber registered as a lobbyist under Canada's rules. The meetings were all arranged by either Elmer MacKay or Fred Doucet, or both of them, both being good friends of Mr. Mulroney. For a substantial period of time that Mr. Doucet was arranging access with Mr. Mulroney on behalf of Mr. Schreiber, he (Mr. Doucet) was employed by Mr. Schreiber as a lobbyist for Bear Head Industries. I find that both Mr. MacKay and Mr. Doucet took advantage of their friendship with Mr. Mulroney in arranging access to him for Mr. Schreiber. Notwithstanding the fact that both Mr. MacKay and Mr. Doucet were old friends of Mr. Mulroney, I find that Mr. Mulroney could have and should have brought – but did not bring – an end to the inappropriate, excessive access granted to Mr. Schreiber.

I find that the business dealings between Mr. Schreiber and Mr. Mulroney evolved as a direct result of the relationship that was established between Mr. Schreiber and Mr. Mulroney while Mr. Mulroney was the prime minister of Canada. I find further that those business dealings led to the unwritten and undocumented agreement entered into between them on August 27, 1993, within approximately two months of Mr. Mulroney's leaving the office of prime minister of Canada. Pursuant to that agreement, the two men entered into financial dealings involving three payments of substantial amounts of money in cash made by Mr. Schreiber to Mr. Mulroney.

NOTES

- 1 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3382.
- 2 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3393, 3400-03; May 14, 2009, p. 3888.
- 3 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 266; April 16, 2009, pp. 843-57.
- 4 Exhibit P-8.
- 5 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 857.
- 6 Exhibit P-25, tab 14, p. 3.
- 7 Exhibit P-62, tab 3, pp. 21-24. Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 263-65; April 16, 2009, pp. 843-55.
- 8 Exhibit P-7(4), tabs 37, 42.
- 9 Exhibit P-7(3), tab 21, paras. 2-3.
- 10 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3405; May 14, 2009, pp. 3887-88.
- 11 Exhibit P-48, April 17, 1996, pp. 81-82.
- 12 *Ibid.*, p. 81.
- 13 *Ibid.*, pp. 81-82.
- 14 Exhibit P-25, tab 2.
- 15 *Ibid.*, tab 3.
- 16 Exhibit P-7(4), tab 1.
- 17 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3889-90.
- 18 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3413.
- 19 *Ibid.*, p. 3407.
- 20 Exhibit P-8, p. 1.
- 21 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 266-67.
- 22 Exhibit P-62, tab 3, p. 8.
- 23 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 267-69.
- 24 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3405.
- 25 *Ibid.*, p. 3408.
- 26 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 269. Exhibit P-8, p. 1.
- 27 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3410.
- 28 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, pp. 858-59.
- 29 Exhibit P-8, p. 1.
- 30 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, p. 860.
- 31 Testimony of Mr. Pat MacAdam, Transcript, April 20, 2009, p. 1240.
- 32 Exhibit P-14, tab 1, p. 99.
- 33 Exhibit P-14, tab 2, p. 82.
- 34 Testimony of Mr. Pat MacAdam, Transcript, April 20, 2009, p. 1249.
- 35 *Ibid.*, pp. 1240-43.
- 36 Exhibit P-25, tab 19, p. 1.
- 37 Testimony of Mr. Pat MacAdam, Transcript, April 20, 2009, pp. 1275-79.
- 38 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3410, 3417-18.

- 39 Ibid., pp. 3416–17.
- 40 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3416.
- 41 Testimony of Mr. Pat MacAdam, Transcript, April 20, 2009, pp. 1244–45.
- 42 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 276–77.
- 43 Testimony of Mr. Karlheinz Schreiber, Transcript, May 7, 2009, p. 3327.
- 44 Ibid., pp. 3327–28.
- 45 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 286.
- 46 Ibid., p. 294.
- 47 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 414; Transcript, May 7, 2009, p. 3331.
- 48 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, pp. 868–69; Transcript, May 7, 2009, pp. 3324–26.
- 49 Testimony of Mr. Karlheinz Schreiber, Transcript, May 7, 2009, p. 3363.
- 50 Exhibit P-7(3), tab 16, p. 2.
- 51 Exhibit P-7(1), tab 89. Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 382–83.
- 52 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3502–03.
- 53 Ibid., p. 3504.
- 54 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3960.
- 55 Ibid., pp. 3958–61.
- 56 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3505–06.
- 57 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3942.
- 58 Ibid., pp. 3906–07, 3940–41.
- 59 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3503.
- 60 Ibid., pp. 3382–83.
- 61 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3504.
- 62 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3961.
- 63 Testimony of Mr. Fred Doucet, Transcript, April 27, 2009, p. 2114.
- 64 Ibid., pp. 2114–15.
- 65 Ibid., p. 2098.
- 66 Testimony of Mr. Norman Spector, Transcript, April 30, 2009, pp. 2579–80, 2658–60.
- 67 Testimony of Mr. Paul Tellier, Transcript, May 5, 2009, pp. 3139–40.
- 68 Ibid., pp. 3142–43.
- 69 Exhibit P-7(4), tabs 3, 17.
- 70 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3990.
- 71 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3433.
- 72 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4506–07.
- 73 Testimony of Mr. Karlheinz Schreiber, Transcript, May 7, 2009, pp. 3327–29.
- 74 Testimony of Mr. Karlheinz Schreiber, Transcript, April 17, 2009, p. 1109.
- 75 Exhibit P-50, tab 1.
- 76 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3923–24.
- 77 Exhibit P-50, tab 2: Mr. Schreiber's agenda entry reads: "18:30 Brian Mulroney"; Exhibit P-7(4), tabs 2, 3.
- 78 Exhibit P-7(4), tab 2. Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, pp. 871–75.
- 79 Exhibit P-7(4), tab 2.
- 80 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3433–35; Transcript, May 14, 2009, pp. 3925–27. Exhibit P-7(4), tabs 2, 3; Exhibit P-50, tab 2.
- 81 Exhibit P-7(4), tab 3.
- 82 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3436–37; Transcript, May 14, 2009, pp. 3925–27.
- 83 Exhibit P-50, tabs 3, 4 (references the following: July 3, 1990 – Mr. Schreiber's agenda entry reads: "8:30 PM Frühstück"; July 3, 1990 – Daily schedule for the Prime Minister: "8:30 Breakfast 7 Rideau Gate"; July 4, 1990 – Mr. Schreiber's agenda entry: "11:30 Paul Tellier Meeting").
- 84 Exhibit P-7(4), tab 4.
- 85 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 278–79.

- 86 Exhibit P-50, tab 3.
- 87 Exhibit P-50, tab 4.
- 88 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3953, 3955–56.
- 89 Exhibit P-7(4), tab 5.
- 90 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3442.
- 91 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3962–64.
- 92 Exhibit P-7(4), tab 6.
- 93 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 279.
- 94 Exhibit P-50, tab 6.
- 95 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3965.
- 96 *Ibid.*, p. 3969.
- 97 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3971–72.
- 98 Exhibit P-50, tab 7 (Mr. Schreiber's April 10, 1991, agenda entry reads: "16:00 PM/Tellier Fred" (see also Exhibit P-30, tab 12); Mr. Doucet's April 10, 1991, agenda entry reads: "16h K. S with P.M." (see also Exhibit P-30, tab 2); Mr. Tellier's April 10, 1991, agenda entry reads: "Premier Ministre – Fred Doucet – Schreiber re Bear Head Ind." (see also Exhibit P-39, tab 30); the Daily Schedule for the Prime Minister for April 10, 1991, reads: "4:00 J. A. Doucet – Karlheinz Schreiber – Paul Tellier"); Exhibit P-7(4), tabs 7, 8.
- 99 Exhibit P-39, tab 30. Testimony of Mr. Paul Tellier, Transcript, May 5, 2009, pp. 3101–05.
- 100 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3505–06.
- 101 Exhibit P-39, tab 31.
- 102 Exhibit P-25, tab 10.
- 103 Exhibit P-7(1), tab 67(a).
- 104 *Ibid.*, tab 69.
- 105 Testimony of Mr. Paul Tellier, Transcript, May 5, 2009, pp. 3107–09.
- 106 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 279.
- 107 Exhibit P-7(4), tab 8.
- 108 Exhibit P-7(3), tab 21, para. 13.
- 109 *Ibid.*, tab 21, para. 13.
- 110 Exhibit P-65.
- 111 *Ibid.* p. 4.
- 112 *Ibid.*
- 113 Testimony of Mr. Fred Doucet, Transcript, April 27, 2009, pp. 2104–06. Exhibit P-30, tabs 2, 12.
- 114 Exhibit P-46, tab 2.
- 115 Exhibit P-50, tab 8. (Mr. Schreiber's May 5, 1992, agenda entry reads: "15:15 Elmer 15:45 Brian / Centre Block"; and the May 5, 1992, Daily Schedule for the Prime Minister reads: "3:45 Mtg: Elmer MacKay / Karlheinz Schreiber – 307-S"); Exhibit P-7(4), tabs 9, 10.
- 116 Exhibit P-7(4), tab 9. Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 361–62.
- 117 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 279, 361–62; April 15, 2009, pp. 536–37.
- 118 Exhibit P-7(4), tab 9.
- 119 Exhibit P-7(4), tab 10. Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 364.
- 120 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4019.
- 121 Exhibit P-7(4), tab 11.
- 122 *Ibid.*, tab 12.
- 123 *Ibid.*
- 124 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 279–80; April 16, 2009, p. 867.
- 125 Exhibit P-50, tab 9; Exhibit P-30, tab 13.
- 126 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, pp. 4046–47.
- 127 *Ibid.*, pp. 4040–41.
- 128 *Ibid.*, pp. 4048.
- 129 Testimony of Mr. Fred Doucet, Transcript, April 27, 2009, pp. 2107–12.
- 130 Exhibit P-7(4), tab 13.
- 131 Exhibit P-7(4), tab 17. Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3439–40.

- 132 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3440.
- 133 Exhibit P-7(4), tab 17.
- 134 Exhibit P-7(4), tab 14. Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 382–86.
- 135 Exhibit P-7(4), tab 15.
- 136 Ibid., tab 16.
- 137 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 413–14.
- 138 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4051.
- 139 Exhibit P-7(4), tab 18.
- 140 Exhibit P-51, tabs 1, 2, 3.
- 141 Exhibit P-7(2), tab 116, p. 1.
- 142 Ibid., pp. 4–8.
- 143 Exhibit P-8, p. 5.
- 144 Ibid.
- 145 Testimony of Mr. Karlheinz Schreiber, Transcript, April 17, 2009, p. 1215.
- 146 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 628, 638–39.
- 147 Ibid., pp. 627–28. Exhibit P-51.
- 148 Exhibit P-7(3), tab 21, para. 26.
- 149 Exhibit P-9, tab 18.
- 150 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3723.
- 151 Ibid., p. 3721.
- 152 Exhibit P-26.
- 153 Exhibit P-48 (April 17, 1996); Exhibit P-48 (April 19, 1996); final written submissions of the Right Honourable Brian Mulroney, PC, CC, LLD, p. 70.
- 154 Exhibit P-7(4), index.
- 155 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3722; May 20, 2009, pp. 4589–90. Mr. Mulroney testified that in 1998 he was retained by the World Gold Council for a major project, which required him to visit with the governors of all the major central banks of the world. He testified that, in carrying out this assignment, he had meetings in a number of European countries, including Switzerland. The trip took place from January 30 to February 6, 1998. Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3722–23.
- 156 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4361–67. Exhibit P-44, tab 82.
- 157 Exhibit P-44, tab 82.
- 158 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4335.
- 159 Ibid., pp. 4368–69.
- 160 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, p. 640.
- 161 Ibid., p. 645.
- 162 Ibid., p. 642.
- 163 Testimony of Mr. Karlheinz Schreiber, Transcript, April 17, 2009, pp. 980, 985.
- 164 Testimony of Mr. Paul Terrien, Transcript, April 23, 2009, pp. 1972–76.
- 165 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 648–49.
- 166 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3733.
- 167 Ibid., p. 3733.
- 168 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4375–76.
- 169 Ibid., pp. 4384–85.
- 170 Exhibit P-7(3), tab 3.
- 171 Ibid., p. 7.
- 172 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, p. 668.
- 173 Exhibit P-7(3), tab 6(a).
- 174 Ibid.
- 175 Ibid., para. 13.
- 176 Exhibit P-7(4), tab 37, p. 4.
- 177 Testimony of Mr. Fred Doucet, Transcript, April 27, 2009, p. 2212.
- 178 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4385.
- 179 Ibid., p. 4395.

- 180 Exhibit P-7(3), tab 31.
- 181 Exhibit P-7(4), tab 20. Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, pp. 768–70.
- 182 Testimony of Mr. Karlheinz Schreiber, April 16, 2009, pp. 767–68.
- 183 Exhibit P-7(4), tab 22.
- 184 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, p. 777.
- 185 Exhibit P-7(4), tab 23.
- 186 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, p. 618.
- 187 Exhibit P-7(5), tabs 1–10.
- 188 Ibid., tabs 10, 11, 12, 13.
- 189 Ibid., tab 15.
- 190 Ibid., tab 23.
- 191 Exhibit P-7(4), tab 25.
- 192 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, pp. 793–96.
- 193 Ibid., p. 798.
- 194 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3776.
- 195 Exhibit P-37, tab 52. Testimony of Mr. Elmer MacKay, Transcript, May 4, 2009, p. 2826.
- 196 Testimony of Mr. Elmer MacKay, Transcript, May 4, 2009, p. 2827.
- 197 Ibid., p. 2830.
- 198 Ibid., pp. 2830–31.
- 199 Exhibit P-7(4), tab 27.
- 200 Ibid., tab 29, p. 2.
- 201 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, pp. 816–18.
- 202 Exhibit P-7(3), tab 17.
- 203 Ibid.
- 204 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 608–09.
- 205 Testimony of Mr. Karlheinz Schreiber, Transcript, April 17, 2009, pp. 989–90. See also: Letter from Mr. Schreiber to Mr. Paul Szabo, dated March 3, 2008: “The AIRBUS business and the meeting with Brian Mulroney on Monday, February 2, 1998 at the Hotel Savoy in Zuerich [sic], Switzerland is a similar story with complexities only a Public Inquiry will uncover.” Exhibit P-7(3), tab 24.
- 206 Testimony of Mr. Karlheinz Schreiber, Transcript, April 17, 2009, pp. 993–94.
- 207 Ibid., p. 988. Exhibit P-7(3), tab 19.
- 208 Exhibit P-8, p. 2.
- 209 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, pp. 898–904.
- 210 Exhibit P-7(4), tab 38.
- 211 Exhibit P-7(3), tab 21, para. 41. Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, p. 824.
- 212 Exhibit P-7(3), tab 21, para. 44. Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, p. 580. Exhibit P-7(3), tab 17.
- 213 Exhibit P-7(4), tab 38. Testimony of Brian Mulroney, Transcript, May 20, 2009, p. 4574.
- 214 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4574–77. Exhibit P-7(3), tab 21, para. 42; Exhibit P-7(4), tabs 22, 23, 26.
- 215 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4578–79. Exhibit P-7(4), tab 26, p. 2.
- 216 Exhibit P-7(4), tab 43.
- 217 Testimony of Mr. Karlheinz Schreiber, Transcript, April 17, 2009, p. 1024.
- 218 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3780.
- 219 Ibid., p. 3781.
- 220 Ibid., pp. 3778–81.
- 221 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, pp. 4009–10.
- 222 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1787. Exhibit P-25, tab 2.
- 223 Ibid., p. 1787. Exhibit P-25, tab 2.
- 224 Exhibit P-25, tab 2.
- 225 Ibid.
- 226 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1792. Exhibit P-25, tab 3.

- 227 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1816–17. Exhibit P-25, tab 7.
- 228 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1840–42, 1849–57. Exhibit P-25, tabs 11, 13, 14.
- 229 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1840–41.
- 230 Ibid., pp. 1840–41. Exhibit P-25, tab 11.
- 231 Exhibit P-25, tab 11.
- 232 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1840–42. Exhibit P-25, tab 11.
- 233 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1846–49. Exhibit P-25, tab 13.
- 234 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1849–57. Exhibit P-25, tab 14.
- 235 Exhibit P-38, tab 37.
- 236 Exhibit P-38, tab 26.

The Agreement

The relationship between Mr. Schreiber and Mr. Mulroney, which I discuss in Chapter 5, culminated in an agreement between them and the payment of monies by Mr. Schreiber to Mr. Mulroney. That agreement and those payments not only constitute the subject of this chapter but also represent an integral segment of the mandate of this Commission.

The Terms of Reference direct me to delve into all details pertaining to the agreement between Mr. Schreiber and Mr. Mulroney and the payment of monies by Mr. Schreiber to Mr. Mulroney. Questions 2 through 6, inclusive, and Question 8 of the Terms of Reference relate directly to the agreement and to the payment of money. These questions are as follows:

2. *Was there an agreement reached by Mr. Mulroney while still a sitting prime minister?*
3. *If so, what was that agreement, when and where was it made?*
4. *Was there an agreement reached by Mr. Mulroney while still sitting as a Member of Parliament or during the limitation periods prescribed by the 1985 ethics code?*
5. *If so, what was that agreement, when and where was it made?*
6. *What payments were made, when and how and why?*
8. *What services, if any, were rendered in return for the payments?*

The matters of the agreement and the payment of monies were fully canvassed during the course of the first phase of this Commission: the Factual Inquiry. Neither Mr. Schreiber nor Mr. Mulroney disputes the fact that an agreement was made between them. However, both the date on which the agreement was made and the nature of its terms are contentious.

Mr. Schreiber, for example, gave a number of different versions of when the agreement was made. Ultimately, however, he testified before me that he entered into an agreement with Mr. Mulroney at Harrington Lake, the prime minister's official country residence, on June 23, 1993, to work together in the future. Following that agreement, he said, they met on August 27, 1993, at the CP Hotel at Mirabel Airport to finalize the agreement.

According to Mr. Mulroney, however, nothing was established during their meeting at Harrington Lake. He testified that they made their agreement at Mirabel.

The date on which they entered into the agreement is of consequence because, on June 23, 1993, Mr. Mulroney was still the prime minister, while on August 27 of that year, having stepped down as prime minister on June 24, he remained a member of parliament. In terms of rules governing ethics and conflict of interest, different regimes were in place at that time for ministers of the Crown, including the prime minister, and for members of parliament, as is the case today. I say more about those rules in Chapters 9 and 11 of my Report.

At the outset, I observe that, whenever a businessperson who is lobbying the government on behalf of a project pays monies to a sitting Canadian prime minister or to a member of parliament, it is, or should be, a serious cause for concern which demands an explanation – and that is what happened here. The payment of monies on three separate occasions by Mr. Schreiber to Mr. Mulroney was undoubtedly the major factor behind the appointment of this Commission.

As I explain in this chapter, I have concluded that Mr. Schreiber retained Mr. Mulroney to promote the sale in the international market of military vehicles produced by Thyssen. However, because Mr. Mulroney did not document his transaction with Mr. Schreiber and because he left no paper trail concerning the payments or what services, if any, he rendered in exchange for those payments, I have concluded that there is no evidence to support Mr. Mulroney's contention that he rendered any services to Mr. Schreiber in relation to what he (Mr. Mulroney) asserted was a mandate to market Thyssen vehicles internationally. I have also concluded that Mr. Mulroney has failed to give a credible explanation for why he took payment in cash, without documenting or creating a paper trail of the transaction.

My consideration of the evidence relative to the agreement, the purpose of the payments, and any services rendered that arose as a result of the relationship between Mr. Schreiber and Mr. Mulroney commences with their meeting of June 3, 1993 – to which I now turn.

Centre Block Meeting, June 3, 1993

At 3:30 p.m. on June 3, 1993, Mr. Mulroney, Mr. Schreiber, Fred Doucet (Mr. Mulroney's long-time friend and former senior adviser who was now a lobbyist for Mr. Schreiber), and David McLaughlin (Mr. Mulroney's chief of staff) assembled in a meeting room in the Centre Block of the Parliament Buildings.

Mr. Schreiber testified that he attended a meeting on that day at which Mr. Mulroney and Mr. Doucet were present. At the time, he said, on Mr. Mulroney's recommendation and with his support, he was in the midst of advancing the (fourth) Bear Head proposal in Montreal (see Table 4-1). To this end, he and Mr. Doucet had met with Jean Corbeil, the minister of transport, the previous day, June 2. Mr. Schreiber stated that Mr. Doucet arranged the June 3 meeting to update Mr. Mulroney on the ongoing situation with Bear Head. He testified that he may also have spoken to Mr. Mulroney about the upcoming Conservative leadership convention and about whether they should support Jean Charest or Kim Campbell for the position of party leader.

According to Mr. Schreiber, this meeting, which lasted 45 minutes to an hour, began a dialogue between him and Mr. Mulroney about completing the Bear Head Project in Montreal. This dialogue continued at Harrington Lake on June 23, 1993, and continued through to the meeting at the Pierre Hotel in New York City on December 8, 1994.

Although Mr. Doucet was able to confirm in his testimony that a meeting occurred on June 3, 1993, he had no specific recollection of it. He said he could "only presume" that the June 3 meeting was about the Bear Head Project. He said that a photograph of Messrs. Mulroney, Schreiber, McLaughlin, and himself was probably taken on that occasion. Although the taking of a photograph might indicate a social component to the meeting, Mr. Doucet said, the prime minister's official photographer commonly took pictures of the prime minister and others who attended meetings in the Centre Block after Question Period. Most important, Mr. Doucet acknowledged that he was able to facilitate meetings in certain instances between Mr. Schreiber and Mr. Mulroney when Mr. Schreiber arrived in Canada from Germany. Mr. Doucet corroborates Mr. Schreiber's evidence on this point. Mr. Doucet, in his capacity as a lobbyist for Mr. Schreiber, was assisting him by continuing to gain access for him to Mr. Mulroney.

Mr. Mulroney likewise testified that he had no recollection of the meeting held on June 3, 1993. He noted that the schedule produced by his office indicates that the meeting was 30 minutes in duration. According to Mr. Mulroney, either Mr. Doucet or Elmer MacKay, another long-time friend who was the member for Central Nova, would have requested the meeting. Although he was leaving office on June 24, 1993, Mr. Mulroney said he would have listened to the issues raised at the meeting. He

assumed they discussed the Bear Head Project and the graduation of the project to either “another phase or another area.”¹ Mr. Mulroney agreed with the suggestion put to him by Richard Wolson, Commission counsel, that, despite his imminent departure as prime minister, he still had the authority to make the project happen.

Although Mr. Mulroney testified he had no recollection of the meeting on June 3, he said there was absolutely no discussion on that occasion of his entering into a commercial transaction with Mr. Schreiber. He said he assumed all the talk pertained to “the project,” which I took to be the Bear Head Project.

By tradition, the chief of staff or his or her representative attends meetings involving the prime minister, but Mr. Mulroney did not always have someone present at meetings. With reference to this meeting, however, Mr. Mulroney noted that he had previously asked Mr. McLaughlin to look into the Bear Head Project.

Mr. Mulroney explained that all prime ministers have their personal photographer, so it would have been exceptional if a picture were not taken at such a meeting.

Harrington Lake Meeting, June 23, 1993

On June 23, 1993, Mr. Schreiber travelled to the prime minister’s residence at Harrington Lake and met with Mr. Mulroney. Five witnesses – Paul Smith, Mr. Schreiber, Mr. Doucet, Mr. Kaplan, and Mr. Mulroney – gave evidence respecting the meeting of June 23. I will deal in some detail with the evidence of each of those four witnesses because there is little, if any, consensus with respect to the travel arrangements made for Mr. Schreiber, the subject matter of his discussions with Mr. Mulroney, or the meeting’s significance.

MR. SMITH’S ACCOUNT

At the time, Mr. Smith was Mr. Mulroney’s executive assistant. Mr. Smith recalled that the Mulroney family had vacated the prime minister’s official residence at 24 Sussex Drive before Mr. Mulroney’s resignation as prime minister and that they were then living at Harrington Lake. Ms. Campbell had won the leadership convention on June 13 and was preparing to assume the position of prime minister on June 25, 1993. Mr. Smith believed Mr. Mulroney’s family was with him at the summer residence on June 23, though he could not confirm the family’s presence with certainty. He noted that, although Mr. Mulroney’s tenure as prime minister was about to end, he had a fairly full agenda.

One of the contentious issues in relation to this meeting was the transportation provided for Mr. Schreiber: how he arrived at Harrington Lake and how he returned home after his meeting with Mr. Mulroney. Mr. Smith testified that he drove Mr. Schreiber to Harrington Lake on June 23 in his “jeep.” He said he was not regularly asked to bring guests to Harrington Lake and, in fact, this occasion was the only time

he did so. He was not able to recall who asked him to drive Mr. Schreiber to Harrington Lake, but he agreed that it could have been Mr. Doucet. He said, however, that he would not have driven Mr. Schreiber without checking first with Mr. Mulroney.

Mr. Mulroney's June 1993 agenda indicates a private meeting scheduled for June 23 at 11:00 a.m., with a subsequent meeting labelled "McLaughlin" at 2:00 p.m. that same day.² Mr. Smith conceded in cross-examination by Richard Auger, counsel to Mr. Schreiber, that he had no independent recollection of the events of June 23, 1993. This admission comes as no surprise to me as they occurred some 16 years earlier. Mr. Smith told Commission counsel that it was only because of the printed agenda for that day that he recalled driving Mr. Schreiber to Harrington Lake for a meeting with the prime minister at 11 a.m.

Mr. Smith stated that the meeting between Mr. Mulroney and Mr. Schreiber took less than the three hours between the scheduled meetings for Mr. Mulroney that day, but he was unsure as to the specific duration. Although he did not say that the meeting between Mr. Mulroney and Mr. Schreiber at Harrington Lake was unique, Mr. Smith agreed with a suggestion by Mr. Auger that what was particular about it was its description in the agenda as "private."

Mr. Smith did not recall what he did after he arrived at Harrington Lake with Mr. Schreiber, but said that, typically, he would leave the room and stay near a phone to be available if people were looking for the prime minister. Mr. Smith could not recall how Mr. Schreiber got home from Harrington Lake, but said he was fairly confident he did not drive him home. According to Mr. Smith, it would have been virtually impossible for Mr. Schreiber to leave in the prime minister's chauffeured limousine because the Royal Canadian Mounted Police, who are responsible for guarding the prime minister, would want the car there in the event of an emergency. It would have been a severe breach of protocol, he said, for Mr. Schreiber to be driven home in the limousine. Mr. Smith said that no other means of transportation was available at this residence for a guest of the prime minister.

MR. SCHREIBER'S ACCOUNT

Mr. Schreiber also gave an account of the meeting he had with Mr. Mulroney on June 23, 1993. He explained that there had been significant activity regarding the establishment of the Bear Head Project in Quebec in the days leading up to the Harrington Lake meeting. Mr. Doucet was very involved with the project at the time and, before the meeting, Mr. Schreiber asked him what they were going to do about the project now that Mr. Mulroney was about to leave office. When Mr. Doucet responded that Mr. Mulroney was having financial troubles, Mr. Schreiber said he was prepared to help Mr. Mulroney.

Mr. Doucet's only involvement with the meeting, according to Mr. Schreiber, was to arrange it. He informed Mr. Schreiber that he would be picked up by a

limousine. In his interview with Commission counsel, a summary of which was made an exhibit, Mr. Schreiber said the meeting was arranged by Mr. Doucet at the request of Mr. Mulroney, and the arrangements for the limousine were made at Mr. Mulroney's request.³ On being questioned by Guy Pratte, Mr. Mulroney's counsel, Mr. Schreiber conceded that he had been trying to arrange a meeting with Mr. Mulroney at the time and that it was he who initiated the contact that led to the meeting on June 23.

Mr. Schreiber denied that the Harrington Lake meeting was a "farewell courtesy visit." Rather, he said there were several reasons for the meeting – to discuss the Bear Head Project; to secure Mr. Mulroney's future support in Quebec; and to help Mr. Mulroney with his financial troubles. According to Mr. Schreiber, he wanted to provide this assistance because of Mr. Mulroney's involvement in helping to achieve the reunification of Germany.

According to Mr. Schreiber, Mr. Mulroney predicted, during the course of their meeting at Harrington Lake, that Ms. Campbell would win a majority government in the next election. He told Mr. Schreiber he would be in a favourable position to help with the Bear Head Project, given his connections in Montreal, once Ms. Campbell was prime minister. Mr. Schreiber claimed he was surprised by Mr. Mulroney's prediction that Ms. Campbell would win a majority government.

Mr. Schreiber stated that, as he was leaving the meeting, he told Mr. Mulroney he would check what money was available for the Bear Head Project in Montreal. Subsequently, however, he acknowledged that he did know that day what amount of money was available, even though he informed Mr. Mulroney that he needed first to speak with Frank Moores. The money was in the Frankfurt account, which belonged to Mr. Moores. A former premier of Newfoundland, Mr. Moores was one of three principals in the lobbying firm Government Consultants International (GCI). He died in 2005, so it is impossible to verify Mr. Schreiber's evidence about the Frankfurt account with the only other person who is alleged to have been involved.

In his testimony, Mr. Schreiber provided several different versions of how he arrived at the agreement he made with Mr. Mulroney. One version, given when he was questioned by Mr. Pratte, was that he entered into the agreement at the Mirabel meeting, and not at Harrington Lake. A second version, disclosed when he was questioned by Mr. Auger, was that a dialogue with Mr. Mulroney about Bear Head began on June 3, 1993, and evolved through the Harrington Lake meeting into the Mirabel meeting, where the first payment was made. A third version, contained in his affidavit sworn on November 7, 2007, was that he made an agreement at Harrington Lake for the future, whereby Mr. Mulroney would perform certain services on Mr. Schreiber's behalf in obtaining approval for the establishment of a production facility for light armoured vehicles (LAVs).⁴ In the same paragraph, Mr. Schreiber went on to say that he and Mr. Mulroney had a discussion to the effect: "[I]f matters got difficult in

the Province of Nova Scotia, then Mr. Mulroney would assist in moving parts of the project to the Province of Quebec.”

When questioned by Mr. Wolson on April 14, 2009, about the allegations in the affidavit pertaining to the agreement reached at Harrington Lake, Mr. Schreiber said they agreed that they would work together after Mr. Mulroney left office and that they would meet again. They made no fixed agreement at this meeting about the work Mr. Mulroney would do or what he would get paid. Those details, said Mr. Schreiber, were to be discussed at their next meeting.

There are obvious inconsistencies in the various versions Mr. Schreiber put forward about the nature of the agreement he made with Mr. Mulroney on June 23, 1993. When pressed on this point as he testified on May 7, 2009, Mr. Schreiber agreed that he and Mr. Mulroney entered into an agreement at Harrington Lake “to work together in the future.”⁵

In the course of questioning by Mr. Auger, Mr. Schreiber said that, during their discussion at Harrington Lake, Mr. Mulroney did not say that he wanted to wait until he stepped down as prime minister before talking with Mr. Schreiber about their doing business together. Mr. Schreiber testified that, in June 1993, he was an ambitious entrepreneur and wanted the Bear Head Project to succeed. If it were to fail, he would want Mr. Mulroney to assist in another venture. The meeting at Harrington Lake was a continuation of the dialogue relating to Bear Head that began on June 3, 1993, he said, and continued through to the Pierre Hotel meeting on December 8, 1994.

Mr. Schreiber also recalled that Mr. Mulroney showed him a photograph during the meeting and explained that it represented the official portrait of him which would be displayed in the House of Commons. According to Mr. Schreiber, Mr. Mulroney offered to send him a copy of the photograph as a gift.

The Harrington Lake meeting lasted for one-and-a-half hours or more, he stated. After the meeting, Mr. Schreiber said, he accepted Mr. Mulroney’s offer to be driven back to Ottawa by a young staffer in his jeep.

MR. DOUCET’S ACCOUNT

Mr. Doucet also gave evidence about the Harrington Lake meeting. He professed to have no recollection of arranging the meeting, but he did not deny that he may have arranged it. He said he was not briefed on the meeting by either Mr. Schreiber or Mr. Mulroney, and he did not recall knowing about it. He also did not know whether an agreement had been made between the parties. Mr. Doucet confirmed his diary entries of June 1993, which indicate that he left on his annual fishing trip on June 17, 1993, and returned a week later, on June 24.

MR. MULRONEY'S ACCOUNT

In his testimony, Mr. Mulroney said that the Harrington Lake meeting must have been arranged by either Mr. MacKay or Mr. Doucet. Mr. Mulroney believed he was advised, perhaps by Mr. Smith, that it was a courtesy call to say goodbye. Mr. Mulroney asserted that he had never arranged a meeting with Mr. Schreiber, though he conceded that he had allowed time to see Mr. Schreiber on June 3 and June 23 despite a busy schedule that month. He did not know why his agenda labelled the meeting as being private rather than as a courtesy call. The meeting on June 23 with Mr. Schreiber was held at Harrington Lake, he explained, because the Mulroney family moved there every summer. In 1993 they had moved to this residence earlier than usual so that 24 Sussex Drive would be ready for Ms. Campbell.

According to Mr. Mulroney, Mr. Schreiber arrived in Mr. Smith's "second-hand jeep." He testified that he did not instruct Mr. Smith to drive Mr. Schreiber, nor did he know how Mr. Schreiber was going to get to Harrington Lake. Mr. Mulroney stated that it was unusual for someone like Mr. Schreiber to come to Harrington Lake with Mr. Smith. However, he agreed with a suggestion Mr. Wolson made to him that, because Mr. Smith picked Mr. Schreiber up and brought him to Harrington Lake, it was a "special occasion."

Mr. Mulroney recalled that the meeting lasted 25 to 30 minutes and took place in the living room, which was wide open, with people coming and going. According to Mr. Mulroney, they spoke about a variety of subjects. They discussed Ms. Campbell's taking over in a few days and the election campaign. On this point Mr. Mulroney remarked: "With my usual unerring accuracy, I forecast a majority government for Ms Campbell."⁶ He denied telling Mr. Schreiber that he would have influence with Ms. Campbell. They also spoke about the reunification of Germany. With respect to the Bear Head Project, Mr. Mulroney said he expressed regret that his government had been unable to complete the project successfully. Mr. Mulroney testified that he escorted Mr. Schreiber to the door at the conclusion of the meeting, and Mr. Schreiber asked what he planned to do. According to Mr. Mulroney, he responded that he would re-establish himself in Montreal. Mr. Schreiber then said that, given Mr. Mulroney's reputation internationally, he would like to be in touch after Mr. Mulroney left office. Mr. Mulroney told Mr. Schreiber that he could be reached through Mr. Doucet, who would have his contact information.

When asked by his counsel, Mr. Pratte, if he made an agreement with Mr. Schreiber at Harrington Lake to work together in the future, Mr. Mulroney replied "absolutely not." Elsewhere in his testimony, he said that no agreement was established at Harrington Lake. He also denied that Mr. Schreiber said he needed to check whether any money remained in an account with regard to the Bear Head Project.

Mr. Mulroney said that he did not know how Mr. Schreiber left Harrington Lake.

MR. KAPLAN'S INTERVIEW NOTES REGARDING THE HARRINGTON LAKE MEETING

William Kaplan, a lawyer and legal historian, conducted several interviews with Mr. Schreiber as he prepared to write his book *A Secret Trial: Brian Mulroney, Stevie Cameron, and the Public Trust* (2004), which discussed, among other things, the relationship between Mr. Schreiber and Mr. Mulroney. Mr. Kaplan made notes of those interviews. He explained that the notes were sometimes made during the interviews and in some cases afterwards. If the notes were made afterwards, he either typed them up or dictated them for his assistant to type. In the course of these interviews, Mr. Schreiber made several statements with respect to the Harrington Lake meeting.

Mr. Kaplan interviewed Mr. Schreiber on February 13, 2004. In his testimony, Mr. Kaplan confirmed that, while being interviewed that day, Mr. Schreiber made a number of statements about the meeting at Harrington Lake. First, Mr. Schreiber told him he wanted to see Mr. Mulroney at Harrington Lake and did so at Mr. Mulroney's request. Second, he told him that Mr. Mulroney sent a car to pick him up. Third, he said that he and Mr. Mulroney discussed the Bear Head Project. Fourth, he said that Mr. Mulroney told him that Ms. Campbell would be elected and that Mr. Mulroney could help with the Bear Head Project at that time.⁷

During an interview on March 6, 2004, Mr. Schreiber told Mr. Kaplan that, when he met Mr. Mulroney at Harrington Lake, the prime minister said that Ms. Campbell would be elected with a majority and that there could then be progress on moving the proposed Bear Head facility to the Province of Quebec. According to Mr. Kaplan, Mr. Schreiber also stated that, by that point, Thyssen had spent more than \$10 million on the project and that the company had agreed to spend an additional \$500,000. That amount had been put in the Britan or Breton account. During his testimony, Mr. Schreiber denied making the remarks to Mr. Kaplan as set out in the last two sentences.

Mr. Kaplan's notes of the March 6 interview disclose that, when he told Mr. Schreiber the withdrawals from Britan or Breton seemed to correspond with payments to Mr. Mulroney, Mr. Schreiber refused to comment. In his testimony, Mr. Kaplan agreed with Mr. Wolson's suggestion that Mr. Schreiber had told him that the \$500,000 deposited into the Britan or Breton account was to pay Mr. Mulroney.⁸ Mr. Schreiber was interviewed by Mr. Kaplan again, this time on March 31, 2004. Mr. Kaplan confirmed, in giving his evidence, what is indicated in his notes of that interview. Mr. Schreiber told Mr. Kaplan that, "After Brian Mulroney left office I hoped to get his support that the Bearhead [sic] project would go ahead." Mr. Kaplan's notes indicate that Mr. Schreiber went on to say that, in his opinion, because Mr. Mulroney had been the previous prime minister of Canada, he would make a good representative for Thyssen in supporting the sale of peacekeeping and environmental protection equipment out of Canada.⁹

Mr. Kaplan took notes during the course of another interview of Mr. Schreiber, on December 30, 2003.¹⁰ In giving his evidence before me, Mr. Kaplan confirmed what he had noted during the course of that interview – that Mr. Schreiber had gone to Harrington Lake and that Mr. Doucet had asked him to help Mr. Mulroney out.

The notes Mr. Kaplan made during his interviews with Mr. Schreiber demonstrate, in my view, the difficulty anyone would have in putting credence into what Mr. Schreiber had to say about the meeting at Harrington Lake. I note that, on the four occasions when Mr. Schreiber spoke to Mr. Kaplan, he gave four different versions of what occurred at that meeting. However, Mr. Kaplan's notes do indicate that, on each of the four occasions, Mr. Schreiber told Mr. Kaplan that he had met with Mr. Mulroney at Harrington Lake and that they discussed the Bear Head Project. Mr. Mulroney did not disagree but said the discussion was limited to his apologizing for failing to complete the project.

Thyssen Proposal Brief, August 26, 1993

In August 1993 Thyssen / Bear Head Industries approached the Government of Canada with a proposal to establish a facility to manufacture tracked light armoured military vehicles in the east end of Montreal.¹¹ It was a variation of the fourth Bear Head proposal, which had been submitted the previous year.

A document entitled “Thyssen Project in Canada,” dated August 26, 1993, outlines a plan to establish a research and development facility in Canada to produce prototypes for the TH 495 multi-purpose base armoured vehicle (MBAV) series of vehicles. The document states that, once the Canadian government has committed its support for the complete research and development phase, Thyssen will “establish a Canadian prototype development facility followed by the placement of the world production mandate for the TH 495 MBAV.” The document includes a section setting out the potential market for the TH 495 in NATO and NATO-friendly countries.¹²

MEETING TO PROMOTE THYSSEN IN QUEBEC, AUGUST 26, 1993

The same day, August 26, 1993, Mr. Schreiber and Mr. Doucet met with Mr. Corbeil, the minister of transport, and Mr. Charest, the minister responsible for the Federal Office of Regional Development – Quebec (FORD-Q).¹³ In his testimony, Mr. Doucet confirmed that he and Mr. Schreiber attended the meeting, and he agreed that their objective was to promote Thyssen in Quebec. Mr. Doucet stated that, within hours of this meeting, Mr. Schreiber asked him to arrange for a meeting with Mr. Mulroney at the hotel at Mirabel Airport.

Mr. Wolson asked Mr. Schreiber if it was a coincidence that he met with the ministers one day and that, the next day, he gave Mr. Mulroney money at Mirabel. Mr. Schreiber responded that he was at the meeting with the ministers by accident and

that he met with Mr. Mulroney the next day at Mirabel because he (Mr. Schreiber) was returning to Europe.

Mr. Mulroney testified that he had no knowledge of the meeting on August 26, 1993, until Mr. Schreiber testified before the Commission.

Mirabel Meeting, August 27, 1993

There is no dispute that Mr. Schreiber and Mr. Mulroney met at the CP hotel at Mirabel Airport near Montreal on August 27, 1993 (Mirabel meeting). Both men agree that the meeting occurred. They also concur on the date and the place of the meeting. However, there is no agreement on any other aspect of the meeting. Because in my view what occurred at the meeting is of such importance, I next provide a detailed review of the evidence touching on it. The evidence I received came from various documentary exhibits and from the testimony not only of Mr. Schreiber and Mr. Mulroney but also of witnesses including Mr. Doucet, Mr. Kaplan, and Luc Lavoie, a former spokesperson for Mr. Mulroney.

In their testimony before me, Mr. Schreiber and Mr. Mulroney provided different accounts of the meeting at the hotel at Mirabel Airport. Briefly put, by Mr. Mulroney's account, Mr. Schreiber retained him on a mandate to promote Mr. Schreiber's interests and Thyssen light armoured vehicles internationally and provided him with the first \$75,000 instalment of the retainer. By Mr. Schreiber's account, as they had agreed at Harrington Lake, he hired Mr. Mulroney at the Mirabel meeting to lobby on behalf of Thyssen / Bear Head as it sought to establish a production facility in the east end of Montreal. According to Mr. Schreiber, the amount of the first instalment he paid to Mr. Mulroney was \$100,000. Both agreed that the payment was made in cash in \$1,000 bills.

Mr. Mulroney's Account

Background

According to Mr. Mulroney, sometime before August 27, 1993, Mr. Doucet called to tell him that Mr. Schreiber wanted to meet with him when he (Mr. Schreiber) was next in Canada.

Mr. Mulroney said he believed he received a second call after Mr. Doucet ascertained why it was that Mr. Schreiber wanted to speak to him. This call came approximately 10 days before the Mirabel meeting. According to Mr. Mulroney, Mr. Doucet advised him that Mr. Schreiber wanted to discuss an international mandate on behalf of his company or himself, or a group of companies. Mr. Mulroney testified that when he heard it was an international mandate, he thought it was "okay" and suitable.

Mr. Mulroney described a third call during which Mr. Doucet advised him that Mr. Schreiber intended to depart for Europe late in the day on August 27, 1993. He testified that Mr. Doucet asked him if he would meet Mr. Schreiber at the CP Hotel at Mirabel, which, as Mr. Doucet was aware, was 20 to 25 minutes away from the cottage that Mr. Mulroney and his family had rented at Estérel, Quebec. Mr. Doucet informed him of the arrangements and told him that Mr. Schreiber could not spend a long time because his flight was departing soon after the time allowed for the meeting.

Mr. Mulroney testified that he had “no idea what was going to transpire” at the Mirabel meeting. He subsequently acknowledged, however, that he knew from Mr. Doucet’s phone call that Mr. Schreiber was going to offer him international work, though he did not know the precise nature of the work.

When he met with Mr. Schreiber on August 27 at Mirabel, Mr. Mulroney asserted that he was unaware that Mr. Schreiber had, before the meeting, set up the Britan account and transferred \$500,000 into it. Mr. Mulroney also said he was unaware that Mr. Schreiber had withdrawn \$100,000 in Canadian currency from the Britan account and brought it to Canada with him.

The Meeting

Mr. Mulroney testified that, as a former prime minister, he had RCMP duty officers at Estérel. He said he was driven to the hotel by two plainclothes RCMP officers.

Mr. Mulroney’s recollection is that he went to the hotel at night shortly before Mr. Schreiber’s flight departed. He said that, before he arrived, he knew that Mr. Schreiber had a room booked at the hotel. Initially, Mr. Mulroney stated that he did not arrange for the hotel room, but when he was asked later whether he had rented a room, he replied: “There are perhaps records, I don’t know but I ... I certainly didn’t reserve any room.”¹⁴ He continued, “And if that’s Mr. Schreiber’s position, I can only conclude that Mr. Doucet or someone else, someone on his staff, you know, rented the room on his behalf.”

When he arrived at the hotel with the two RCMP officers, Mr. Mulroney inquired whether a room was registered in Mr. Schreiber’s name. He was informed that Mr. Schreiber did have a room and provided with the details relating to its location. The officers then escorted him to the room. When he knocked on the door, Mr. Schreiber opened it and he entered, leaving the RCMP officers in the hallway outside.*

Only Mr. Schreiber and Mr. Mulroney were present at this meeting. Mr. Mulroney recounted that Mr. Schreiber began the conversation by telling him he had retained the services of lawyer Ian Scott to sue the Government of Canada for non-performance in regard to the Bear Head Project. Mr. Schreiber provided

* The Commission sought to obtain from the government records of who the RCMP duty officers were who accompanied Mr. Mulroney to this meeting and to others considered in this Report. The Department of Justice informed the Commission that the records no longer exist: Exhibit P-66, Agreed Statement of Facts.

Mr. Mulroney with a copy of the statement of claim. Mr. Mulroney testified that this information was “pretty startling.” He assumed that the meeting would therefore be brief. Mr. Mulroney advised Mr. Schreiber to file the claim if he believed he had a cause of action.

In response to a question from Mr. Pratte, Mr. Mulroney said that Mr. Schreiber then began to talk about Thyssen vehicles. He informed Mr. Mulroney that he would like him to “be on an international peacekeeping track for Thyssen” and asked whether he could assist them internationally in this regard.¹⁵

Mr. Mulroney testified that Mr. Schreiber provided him with documents¹⁶ that dealt with the vehicles – “the roles that they could play, with what appeared to be some merchandising sales approaches internationally.”¹⁷ The vehicles depicted in these documents carried United Nations insignia. Mr. Mulroney testified that he also received from Mr. Schreiber, as part of the documentation, correspondence that he believed had been sent to the head of Thyssen in Germany from Major-General A.C.P. Stone, who, according to Mr. Mulroney, was the director general of land-fighting systems in the UK Department of Defence.¹⁸

According to Mr. Mulroney, he was in the process of reviewing these documents when Mr. Schreiber asked him whether he could assist him internationally. Mr. Mulroney recalled that Mr. Schreiber stated that he thought Mr. Mulroney, a respected former prime minister, could be of great help “on an international peacekeeping track for Thyssen” and that he (Mr. Schreiber) would very much like the opportunity to work with him. Mr. Mulroney said he hoped to be able to work internationally because he was well aware that it was improper for him to deal with the Government of Canada; moreover, he didn’t want to deal with the Government of Quebec, the City of Montreal, or, indeed, any government. He went on to say that he believed Mr. Schreiber knew about his intentions. Mr. Mulroney told Mr. Schreiber that the proposed mandate would be “right up my alley” and that he thought it was something he could usefully do.¹⁹ According to Mr. Mulroney, he did not advise Mr. Schreiber what he could do for him, nor did they confer on the matter in the days following the meeting.

Payment

As reported by Mr. Mulroney in his evidence, when he told Mr. Schreiber that he thought he might be able to help, Mr. Schreiber rose from where they were seated in the corner of the room and walked to the sofa. At that point, Mr. Schreiber opened his briefcase and removed a legal-sized envelope. Mr. Schreiber gave the envelope to Mr. Mulroney and said, “I would like to retain your services and this would be the first advance on that to help me internationally in this regard.”²⁰

Mr. Mulroney said that he did not see Mr. Schreiber put money into the envelope. Furthermore, Mr. Mulroney did not open the envelope at the meeting. In response

to a question asked by Mr. Wolson, Mr. Mulroney stated that he did not know how Mr. Schreiber had concluded that he should put money in the envelope in order to retain him. Although Mr. Mulroney realized that the envelope, because of its dimensions, did not contain a cheque, he did not know at the meeting the amount of money it contained.

According to Mr. Mulroney, when Mr. Schreiber presented him with the envelope, he expressed hesitation through his body language. This hesitation prompted Mr. Schreiber to tell him that the envelope contained money in the form of cash. Mr. Mulroney explained that he had not before been confronted with a cash payment and that he felt it was unusual. He testified that Mr. Schreiber responded spontaneously, “I am an international businessman and I only deal in cash.”²¹ Mr. Mulroney did not ask Mr. Schreiber what he meant by this statement, nor did he ask for a cheque. He conceded, however, that it was at this moment that he should have.

Mr. Mulroney continued that it was “widely known ... that ... principally European companies had different approaches to business internationally than North American businesses.” He stated that, in his experience with boards and corporations, payments have been transacted in a more transparent manner. Although Mr. Mulroney had dealt with several international businesspeople and sat on the boards of several international corporations, he had never received funds from any other international businessperson in cash sealed in envelopes. He testified that, previously, he had always dealt with publicly traded corporations, but in this instance Mr. Schreiber was representing his own interests.

Mr. Mulroney acknowledged that he thought at the time of the Mirabel meeting that Mr. Schreiber was a “major associate” of Thyssen International.²² He said he knew the company had 160,000 employees worldwide and 3,000 in Canada. Mr. Mulroney contended that, although large corporations such as Thyssen did not deal in cash in North America, they did in Europe. Shortly after he received the envelope, Mr. Mulroney testified, Mr. Schreiber said that his wife was waiting and that he had to leave to catch his plane for Europe. In Mr. Mulroney’s estimation, the meeting lasted for approximately 30 minutes.

After the Mirabel Meeting

In Chapter 7, I discuss the facts surrounding what Mr. Mulroney did with the cash he received from Mr. Schreiber on three different occasions. For the purposes of this chapter, I describe what Mr. Mulroney did after the Mirabel meeting, including what he did with the cash he received from Mr. Schreiber at that meeting.

Mr. Mulroney testified that, when he left the hotel room, he carried the envelope in his hand because he had not brought a briefcase with him. The RCMP officers drove him back to Estérel. He said that, on his arrival at the cottage, he counted the money and noted that it consisted of 75 \$1,000 bills. Mr. Mulroney stated that he placed the

money in a safety deposit type of box that his wife, Mila, had at the cottage and that it remained there until the renovations on the Mulroneys' house were completed. At that point the family returned to this home in Montreal, and Mr. Mulroney transferred the cash to a safe in this home.

In his testimony, Mr. Mulroney said that the mandate was not defined at the meeting of August 27. He was not provided with any specific instruction on how he was expected to carry out the international work for which he had been retained. Mr. Mulroney stated that there was never any discussion about his doing anything in relation to the mandate domestically in Canada. He testified that the payment did not reflect compensation for past services in relation to Airbus, Eurocopter, or the Bear Head Project, nor was it for any work he was undertaking to do for Mr. Schreiber in Canada. The length of the term of the retainer was not discussed at the meeting, though it appeared to Mr. Mulroney to be open-ended.

In answer to a question from Mr. Wolson regarding any discussion he may have had with Mr. Schreiber after he left, or whether he called him or had a way to get in touch with him, Mr. Mulroney said that the only way he had of contacting Mr. Schreiber was through Mr. Doucet. I have to say that I find it difficult to believe that Mr. Mulroney, with his background and experience, would accept a mandate from Mr. Schreiber, such as the one he described, without ensuring that he had a means of contacting Mr. Schreiber directly.

After the Mirabel meeting, Mr. Mulroney called Mr. Doucet and informed him that he had met with Mr. Schreiber as arranged and that Mr. Schreiber had "indeed retained my services to represent his interests internationally."²³ Mr. Mulroney believed that he spoke in a general way to Mr. Doucet about the concept he immediately developed in relation to the United Nations. In that discussion with Mr. Doucet, he did not mention the nature of the payment he had received or the amount.

Although the mandate was not defined at the meeting, Mr. Mulroney testified that, in the absence of instructions from Mr. Schreiber, he came up with the concept to try to sell Thyssen military vehicles to the UN through its Security Council. The concept he developed was that he would explore with representatives of the permanent members of the Security Council – the United States, the United Kingdom, China, Russia, and France (sometimes referred as the "P5") – the possibility of the United Nations acquiring standardized armoured vehicles for the use of peacekeeping forces in four or five trouble spots in the world. Mr. Mulroney estimated that, if the United Nations accepted his proposal, it would reduce peacekeeping costs by some \$100–\$200 million. In response to a question asked by Mr. Wolson, Mr. Mulroney agreed that his concept was contrary to the UN norm at that time.

Mr. Mulroney said that, following the meeting, he construed his mandate essentially as a watching brief. He did not call Mr. Schreiber to inform him of his concept or plans because he felt that would have been premature.

Mr. Mulroney never deposited the money he received from Mr. Schreiber at the Mirabel meeting into a bank account. Nor did he advise his accountant of this transaction.

Because of allegations Mr. Schreiber made that Mr. Mulroney was suffering from financial hardship when he left the office of prime minister in August 1993 – an allegation strenuously denied by Mr. Mulroney – I will now review the evidence I received touching on that issue.

Mr. Mulroney testified that, when he resigned as prime minister, he was asked to rejoin the firm of Ogilvy Renault as a senior partner. He had previously practised law at that firm from 1964 until 1967, and he accepted the offer. On his return to Ogilvy Renault, Mr. Mulroney entered into a conventional partnership agreement with this firm on August 2, 1993.²⁴ This agreement contained one exception in the case of Mr. Mulroney – that revenues derived from personal consulting mandates, directorships, and speaking engagements would be excluded from the common revenues of the firm.

When Mr. Mulroney was asked whether he was already involved in his partnership at Ogilvy Renault in late August 1993, he stated that he was not sure. He testified that he thought he was expected to start on September 4, 1993.

In August 1993 Mr. Mulroney arranged for a numbered company that became known as Cansult to be incorporated. He stated that he asked a friend to “incorporate this for me in anticipation of what was going on.” Cansult was “simply a vehicle that would enable me to function within the partnership at all times, with this exception.”²⁵ Mr. Mulroney testified, in response to questions from Mr. Auger, that Cansult was not established for work to be performed for Mr. Schreiber. When asked whether Cansult is “completely ... separate from any ... dealings with Mr. Schreiber,” Mr. Mulroney testified, “[P]retty well, yes. I am not aware of any tie-in.”²⁶

Mr. Kaplan interviewed Mr. Mulroney on December 4, 2002.²⁷ According to his notes, Mr. Mulroney said that, when he joined Ogilvy Renault, he made it clear he would have an independent international consulting practice. He told Mr. Kaplan that, if a client paid him in cash, the transaction would be reflected on the books of his consulting company. In giving his evidence before me, Mr. Kaplan confirmed the accuracy of those notes.

When asked by Mr. Wolson whether the transaction he entered into with Mr. Schreiber was recorded in his company’s books, Mr. Mulroney testified that he did not record the payment. He said, “I believed it was at the time [of the interview with Mr. Kaplan], and this conversation, I think, took place approximately ten years later, and that was an inadvertently inaccurate statement on my part.”²⁸

Mr. Mulroney's Financial Situation

Mr. Mulroney described his financial situation after leaving office as having “less money going out than I had coming in.”²⁹ He was referring to his financial situation when he left office, in contrast to that when he became prime minister.

In addition to being asked to return to Ogilvy Renault, Mr. Mulroney said he was invited to join the boards of the agricultural conglomerate Archer Daniels Midland, Barrick Gold Corporation, and Horsham Corp. He was also engaged by the Washington Speakers Bureau to tour along with other well-known former politicians. There he was paid \$65,000 to \$70,000 for each half-hour speech. He said that, “while there is always uncertainty ... as to how well you are going to do ... I had always done pretty well,” and added that he was “pretty confident” he would be able to “look after” his wife, children, mother, and “other obligations.”³⁰

Mr. Kaplan interviewed Mr. Mulroney on June 4, 1998, while he was writing his first book, *Presumed Guilty: Brian Mulroney, the Airbus Affair and the Government of Canada* (1998). This book focused on Mr. Mulroney and the letter of request the Government of Canada sent to the Swiss and German governments with regard to allegations concerning the sale of Airbus aircraft to Canada, Messerschmidt-Bolkow-Blohm GmbH (MMB) helicopters, and the Bear Head Project. Mr. Kaplan testified that, during the course of that interview, Mr. Mulroney told him, in relation to the period after leaving office, “When I first started out, I needed money quite badly.”³¹ When questioned about this remark at the hearings for this Inquiry, Mr. Mulroney said he was trying to convey to Mr. Kaplan that he had a lot less money when he left office than when he went in. He doubted, however, that he had made those specific remarks to Mr. Kaplan because “it would certainly be an inadvertent description of my situation.”³²

Questioned on this same point, Mr. Schreiber testified: “I understood he needed badly the money.” He said that was one of the reasons he brought money to the Mirabel meeting.³³

Luc Lavoie had worked in various capacities for Mr. Mulroney, including that of deputy chief of staff during some of the years that Mr. Mulroney was prime minister. After leaving the Prime Minister's Office, Mr. Lavoie worked with a public relations firm in Ottawa and Montreal. He was engaged as Mr. Mulroney's spokesperson from 1995 through 2007.

In an article entitled “Mulroney-Schreiber Saga,” which appeared in the *Globe and Mail* on November 22, 2007, Mr. Lavoie is quoted as saying that Mr. Mulroney saw accepting cash as a “colossal mistake.” The article goes on to say, “Mr. Mulroney was in financial straits and worried about his future when he accepted the \$100,000 cash payment while still a member of Parliament in August of 1993, Mr. Lavoie said.”³⁴

In an article published in the *Globe and Mail* on November 21, 2007,³⁵ journalist Jack Aubry quoted Mr. Lavoie as saying that, when Mr. Mulroney “left politics in

1993, he had money pressures: He was the head of a young family with certain lifestyle expectations – and ‘not a rich man.’” In his testimony, Mr. Lavoie confirmed this statement and said that he was not misquoted.³⁶ In the same article, Mr. Lavoie is quoted as saying in relation to Mr. Mulroney’s financial situation when he left the office of prime minister: “So when he left, he had no money. He was optimistic, he was going back to his old law firm, but there is a difference between optimistic and having the revenue.” Mr. Lavoie testified that he obtained this information from reading early drafts of Mr. Mulroney’s memoirs – the information was later “expurgated” before the memoir was published.

According to Mr. Lavoie, what he intended to say to the *Globe and Mail* was that, when an individual leaves a career in politics “and you want to start a new career after having lived in the fast lane seven days a week for nine years, you get a little scared at the thought that: I hope it’s going to work as well as I want and God I can’t wait to have my first client.”³⁷ Mr. Lavoie testified that, when he gave the interview, he was attempting, albeit clumsily, to provide the context to explain why Mr. Mulroney had admittedly been so careless as to agree to be paid in cash.

I am satisfied that Mr. Mulroney made the comments attributed to him by Mr. Kaplan as recorded in the notes of the discussion on June 4, 1998.

Considering all the evidence I have heard and read on the issue of Mr. Mulroney’s financial status on leaving the office of prime minister, I have come to the view that he was short of funds. In these circumstances, Mr. Mulroney was understandably concerned about finding the means to enable him to generate the level of income required to maintain his family in the manner and style to which they had become accustomed.

Mr. Schreiber’s Account

Background

Mr. Schreiber testified that he brought an envelope containing \$100,000 in \$1,000 bills to the Mirabel meeting to retain Mr. Mulroney’s services in connection with the Bear Head Project.

During his questioning of Mr. Schreiber, Mr. Wolson referred him to a letter he had written to Paul Szabo, the chair of the House of Commons Standing Committee on Access to Information, Privacy and Ethics (Ethics Committee). The letter in question was written on March 3, 2008,³⁸ after Mr. Schreiber had testified at the committee’s hearings. Mr. Schreiber wrote that, on July 12, 1993, he advised the Swiss Bank Corporation to open a new account with the code name Britan and to transfer \$500,000 from what is called the Frankfurt account into this new account. According to the letter, on July 27, 1993, he withdrew \$100,000 from the Britan account. He testified that he had to wait until August to withdraw the money from the account because the \$500,000 was in term deposit certificates.

Mr. Schreiber testified that he made the financial arrangements relating to the Britan account with his bank in Switzerland on the basis of the discussion he had with Mr. Mulroney at Harrington Lake, where they agreed that they would work together in the future after Mr. Mulroney left office.

In his testimony, Mr. Schreiber confirmed that the Mirabel meeting had been arranged following his request to Mr. Doucet to meet with Mr. Mulroney. Mr. Schreiber explained that he advised Mr. Doucet about his wish to meet with Mr. Mulroney and that he and Mr. Doucet thought the most convenient place to meet would be at the hotel at Mirabel Airport. It was close to Mr. Mulroney's rented cottage, and Mr. Schreiber was scheduled to depart that evening for Europe.

Mr. Schreiber contended that, although he asked Mr. Doucet to contact Mr. Mulroney and arrange for the meeting at Mirabel, he did not tell Mr. Doucet why he wanted to meet Mr. Mulroney. Mr. Schreiber said it was not his habit to tell people what business he did with others. He emphasized that the purpose of the meeting with Mr. Mulroney was none of Mr. Doucet's business. He testified that there was nothing to discuss with Mr. Doucet because he and Mr. Mulroney had agreed at Harrington Lake that they would meet later and have discussions.

Mr. Doucet testified that he worked for Mr. Schreiber, on retainer, for five years, starting in 1988 and ending in late 1992 or early 1993. Mr. Schreiber testified that Mr. Doucet was paid as a lobbyist promoting the Bear Head Project from 1988 to 1995. In this capacity, he asked Mr. Doucet to arrange for the meeting with Mr. Mulroney at Mirabel. In the circumstances, I find it difficult to believe that Mr. Schreiber would not have disclosed to Mr. Doucet the purpose of his wanting to meet with Mr. Mulroney. I do not accept that Mr. Schreiber would actually believe that Mr. Mulroney would meet with him without knowing or being apprised of the purpose of the meeting, bearing in mind that the two men had met approximately nine weeks earlier.

The Meeting

Mr. Schreiber agreed with the suggestion put to him by Mr. Wolson that he attended the Mirabel meeting with the intention of hiring Mr. Mulroney, knowing that he had an agreement to do so from the meeting at Harrington Lake. He testified that he had no reason to believe that he and Mr. Mulroney would not enter into the agreement established at Harrington Lake. Mr. Schreiber assented to another suggestion made by Mr. Wolson – that he would not have brought the money with him to Mirabel if he did not think he and Mr. Mulroney were going to have a deal. Mr. Schreiber proffered another reason for having the money with him at Mirabel when he said, referring to Mr. Mulroney, “On top of this, I understood he needed badly the money.”³⁹

On February 3, 2008, Mr. Schreiber wrote a letter⁴⁰ to the “Chairman of the Standing Committee on Access to Information, Privacy and Ethics, Mr. Paul Szabo M.P.” He wrote this letter after his initial appearance before

the committee on November 29, 2007, but before his final appearance, on February 25, 2008.

In his testimony, Mr. Schreiber confirmed as being accurate a statement he made in his February 3, 2008, letter to Mr. Szabo:⁴¹ “I hired Brian Mulroney August 27, 1993 in Mirabel, as agreed upon on June 23, 1993 at Harrington Lake, to lobby the activities of Thyssen Bear Head Industries Inc. to establish production facilities for Thyssen Bear Head Industries Inc. at the City of Montreal East, or another place if requested by the government.”⁴²

Mr. Schreiber was transported to the Mirabel Airport from Ottawa in a Lufthansa limousine. He said that, after checking his luggage, he went to the hotel to meet with Mr. Mulroney. Mr. Schreiber testified, “I went to a place, a hotel I didn’t even know that it existed.”⁴³ When he asked for Mr. Mulroney, he said, he was directed to Mr. Mulroney’s suite, where the meeting took place. Mr. Schreiber testified that he was unsure whether Mr. Mulroney had rented the room, although he (Mr. Schreiber) was confident he had not done so. Mr. Schreiber stated that he and Mr. Mulroney met in a hotel room because that was Mr. Mulroney’s preference, and it suited his own travel schedule.

Mr. Schreiber summarized the Mirabel meeting as follows: he was going to see a friend who needed money. The meeting lasted approximately 30 minutes, they exchanged pleasantries, and Mr. Schreiber told Mr. Mulroney that he was happy to bring him a first instalment of \$100,000. As he expressed it: “I meet a friend in a hotel room; he needs money. I come; I bring him the money. ‘Hi, Brian, how are you doing? Here, I am happy to bring you the first \$100,000. Now let’s think about how we are going to work. Let’s see what’s going to happen with Kim Campbell. Let’s see how we can proceed in Montreal.’”⁴⁴ Further, Mr. Schreiber agreed with the description of the meeting as having “an upbeat atmosphere.” He said that he and Mr. Mulroney were on a first-name basis.

When Mr. Wolson asked him whether he told Mr. Mulroney he was an international businessman who dealt only in cash, Mr. Schreiber replied, “That’s nonsense, no.”⁴⁵ He also denied that Mr. Mulroney hesitated before he accepted the money. Mr. Schreiber said he informed Mr. Mulroney at the Mirabel meeting that a total of \$500,000 would be available when the project went ahead. There was no discussion on whether the relationship would be based on a success fee, commission, hourly rate, or bulk fee. When Mr. Wolson asked Mr. Schreiber whether they had discussed the basis for remunerating Mr. Mulroney, Mr. Schreiber responded: “Let’s really be straightforward. When you have a friend and you know he is in trouble, you don’t ask questions like this.”⁴⁶

Mr. Schreiber said he could have given Mr. Mulroney the brochure concerning the Thyssen TH 495 vehicle which Mr. Mulroney said he received at the meeting. He agreed that the United Nations insignia appeared on the vehicles in the brochure and affirmed that these vehicles could be used in UN peacekeeping missions.

Mr. Schreiber testified that the meeting lasted for approximately 30 to 40 minutes. He said he told Mr. Mulroney that the retainer pertained to his services to assist in completing the project in Montreal. When Mr. Wolson reminded Mr. Schreiber that Mr. Mulroney had not been able to get the Bear Head Project under way when he was prime minister, Mr. Schreiber responded: "Mr. Wolson, Mr. Mulroney never told me it's not going to happen. He always claimed that it's a problem with the bureaucrats and others, not me [Mr. Mulroney]."

Other Accounts

Mr. Doucet also testified about the meeting that occurred on August 27 at the hotel at Mirabel. He stated that he arranged the meeting at the request of Mr. Schreiber. He said that, when he asked Mr. Schreiber about the purpose of the meeting, he (Mr. Schreiber) told him he wanted to discuss a retainer agreement whereby Mr. Mulroney would promote Thyssen vehicles internationally. Mr. Doucet said he chose the Mirabel location because Mr. Mulroney had rented a cottage in the vicinity and Mr. Schreiber was leaving for Europe. He also testified that he advised Mr. Mulroney about the purpose of the meeting based on the information he received from Mr. Schreiber.

According to Mr. Doucet, Mr. Mulroney provided him with a briefing subsequent to the meeting, but Mr. Schreiber did not. He said that Mr. Mulroney told him the meeting had been purposeful and helpful, and that they had discussed a working arrangement whereby Mr. Mulroney would carry out "what had been the purpose of the meeting."⁴⁷ Mr. Doucet testified that Mr. Mulroney did not discuss with him the amount of the retainer he received, nor did he inform him that payment was in cash. He said that, in his own financial dealings with Mr. Schreiber, he had always presented invoices and been paid by cheque.

As noted earlier, Mr. Lavoie was engaged as Mr. Mulroney's spokesperson from 1995 through 2007. In that position, he is quoted in an article entitled "Mulroney-Schreiber Saga" in the *Globe and Mail* of November 22, 2007, as saying that Mr. Schreiber met Mr. Mulroney at the Mirabel hotel to "pitch a job to the former prime minister as a consultant on projects with an 'international dimension' – including a military vehicle plant in Montreal and a pasta business."⁴⁸ (To clarify this reference to a pasta business, Mr. Schreiber testified before me that he and Mr. Mulroney did not discuss the pasta project during the Mirabel meeting because it did not even exist in 1993.⁴⁹)

The *Globe and Mail* article refers to an interview Mr. Lavoie gave to the *Ottawa Citizen* in which he suggested that Mr. Mulroney was surprised when Mr. Schreiber pulled out the cash. In relaying what took place at the Mirabel hotel, Mr. Lavoie was quoted as saying that Mr. Schreiber told Mr. Mulroney he would retain him in the amount of \$100,000 a year, and then produced an envelope containing the \$100,000. Mr. Lavoie said that Mr. Mulroney asked Mr. Schreiber why he dealt in cash. In his testimony, Mr. Lavoie confirmed that he made these statements as quoted in the articles.

When Mr. Mulroney was asked about Mr. Lavoie's statements quoted in the *Globe and Mail* article, he testified that the statement with respect to the projects "including a military vehicle plant in Montreal and pasta business" is not accurate.⁵⁰ He acknowledged that Mr. Lavoie, when making these comments, did not use the figure \$75,000, but rather stated \$100,000. When asked whether he told Mr. Lavoie in 2007 that the retainer was \$75,000 a year, Mr. Mulroney responded, "[A]t a given point in time I did tell him, yes."⁵¹

Mr. Schreiber's Letter to Mr. Szabo, February 3, 2008

Mr. Schreiber stated in his February 3, 2008, letter to the Ethics Committee that he never hired Mr. Mulroney to promote the TH 495 vehicle internationally. He echoed this sentiment in his testimony before me when he said that Mr. Mulroney's work did not constitute an international assignment. Mr. Schreiber wrote that he hired Mr. Mulroney on August 27, 1993, at Mirabel, as agreed to on June 23, 1993, at Harrington Lake, to lobby in support of efforts by Thyssen / Bear Head Industries to establish production facilities in the City of Montreal East, or at another place if requested by the government. He confirmed in his testimony that this statement is accurate. Mr. Schreiber denied that Mr. Mulroney's retainer had anything whatsoever to do with an international mandate. He also denied telling Mr. Doucet that the mandate was "a consulting assignment involving international representations and [a] watching brief for corporate opportunities."⁵²

I pause to note that Mr. Schreiber's evidence regarding the nature of the mandate he gave to Mr. Mulroney is rife with contradictions. Although he denied at one point that Mr. Mulroney's retainer had anything whatsoever to do with an international mandate, when he was asked, at another point in his evidence, whether Mr. Mulroney would be selling light armoured vehicles internationally, he said that Mr. Mulroney would not be selling vehicles internationally but would be supporting such sales. Mr. Schreiber also talked about a prime minister with a maple leaf on his head being the best trademark on earth for equipment used for peacekeeping or environmental protection.

Meeting Between Canadian Government and Thyssen Representatives, September 17, 1993

Shortly after the August 26, 1993, meeting that Mr. Schreiber and Mr. Doucet had with Mr. Corbeil and Mr. Charest, an interdepartmental group was established within the Government of Canada to consider the proposal to produce Thyssen TH 495 tracked vehicles in Canada for sale internationally.⁵³ A meeting was held on September 17, 1993, between representatives of the Canadian government and representatives of Thyssen. Greg Alford was one of the Thyssen representatives at the

meeting. According to Mr. Alford, he faced little resistance at the meeting and felt that the discussion was positive. He believed that senior management at the Department of Industry, Science and Technology had indicated that there was serious merit in the market identified by Thyssen and that they should move forward in their examination of it more carefully.

The minutes of that meeting record what transpired.⁵⁴ In testifying before me, Mr. Alford confirmed what appears in the minutes of the meeting – that they discussed how the Canadian products would be marketed internationally as well as the rationale for the global demand for the TH 495 family of tracked vehicles. When referred to the minutes of this meeting, Mr. Alford confirmed that Thyssen vested Canada with the “World Product Mandate” for the vehicles.

Several discussion points are outlined in the minutes of this meeting, including the company’s rationale for basing the project in Canada: potential investment assistance for the project; perceived Canadian marketing advantages, including its special relationships with the United States, the Commonwealth, the Francophone, NATO, and NATO countries; Canada’s unique experience, reputation, and traditions in peacekeeping efforts in many theatres worldwide; and the mix of expertise and technology developed by Canadian peacekeepers over the years.⁵⁵ Mr. Alford confirmed that Thyssen had rationalized the project in this way and agreed that, by basing the project in Canada, the company hoped to take advantage of these particular notions of Canada on the international stage.

After the Progressive Conservative Party was defeated in the October 1993 election and the Liberal Party came to power, Mr. Schreiber retained the well-connected Marc Lalonde to lobby on behalf of the Bear Head Project. As noted elsewhere in this Report, Mr. Lalonde had served as a cabinet minister in various portfolios in previous Liberal governments, and he had already acted as Mr. Schreiber’s legal counsel in relation to commercial matters. He described his relationship with Mr. Schreiber as both professional and personal.

The politically astute Mr. Schreiber retained Mr. Lalonde to attempt to convince the new Liberal government to purchase Thyssen vehicles. Mr. Lalonde testified that at no time during his professional relationship with Mr. Schreiber did they discuss payment in cash. Rather, he routinely prepared invoices for the services he rendered to Thyssen, sent them on behalf of Stikeman Elliott (the law firm where he practised), and they were paid either by cheque or bank draft. Billings were based on the number of hours spent on the file, and the monies received went directly to Stikeman Elliott.

Mr. Mulroney’s mandate also required him to provide services as a consultant rather than a lawyer. The manner of doing business as described by Mr. Lalonde is what I would say is the accepted practice. Mr. Mulroney should have adopted this same practice in his dealings with Mr. Schreiber.

Mr. Lalonde testified that the objective of his retainer was to demonstrate to the Canadian government that Thyssen had a quality vehicle and that there was a viable market for export. He stated that the initial production was expected to be for the Canadian market, and that this purchase would then lead to the development of an international market. Mr. Lalonde also testified that at no point was he informed that Mr. Mulroney had been engaged in connection with the international component of the Bear Head Project or indeed with the project in any capacity.

In June 1994 Mr. Alford sent a memorandum⁵⁶ to Mr. Schreiber, Mr. Lalonde, and others to which he attached the minutes of a June 3, 1994, meeting with Industry, Science and Technology. This memorandum contains an appendix with summaries of various market forecasts.

With reference to this memorandum, Mr. Schreiber agreed that the United States represented an important market for Thyssen, especially in light of the Canadian-American Defence Production Sharing Agreement. He also agreed that a market was available in France.

On October 24, 1994, Mr. Alford wrote a letter to Richard Krajewski,⁵⁷ the director of marine and land defence in the Department of Industry, Science and Technology. Mr. Alford enclosed various documents with that letter, providing more additions to potential markets for the Thyssen vehicles under discussion. Those markets included Russia and China as well as countries in the Middle East. Mr. Alford said that Thyssen had not been told it could not export to these countries or others like them, so they were not excluded as potentially available markets.

In the latter part of 1993 and into 1994, Mr. Alford, Mr. Lalonde, and others performed work for Thyssen with the Canadian government, and Mr. Schreiber and Jürgen Massmann, the president of Bear Head Industries, handled the international aspects for the company. According to Mr. Alford, marketing on the global scale was conducted by Thyssen Henschel in Germany rather than Thyssen / Bear Head Industries.

On December 16, 1994, Mr. Alford wrote a letter to Mr. Lalonde⁵⁸ that contained two enclosures, one of which was an excerpt from a NATO study. This study disclosed a general overview of the NATO MBAV (multi-purpose base armoured vehicle) requirements. It indicated that NATO commanders required an MBAV with a "high degree of standardization and accompanying interoperability of basic components and supply. Ideally, the MBAV should be a single universally accepted vehicle family which would ease acquisition, training, supply, repair and sustainment."⁵⁹

Mr. Alford agreed with Commission counsel Evan Roitenberg that Thyssen hoped to develop a global market for its vehicles. The fact that more countries were joining the peacekeeping effort also had an impact on the growth of the market. Mr. Alford agreed that it would have been important for Thyssen to know the intention of certain countries regarding their own forces and the replacement of vehicles, especially countries that were less open about their policies. He agreed that it would have been beneficial to

Thyssen to have a high-level official, such as a former prime minister, who could reach other heads of state and champion the product in an effort to penetrate markets.

Mr. Alford confirmed that he was never told or given any information about the involvement of Mr. Mulroney in promoting Thyssen internationally. He also confirmed that he was not advised that Mr. Mulroney's services had been retained to lobby on behalf of Thyssen domestically. He testified that, if an individual were hired to market on the international scale, it was not something that he necessarily would have been made aware of.

One can reasonably conclude from Mr. Alford's evidence that Thyssen had a vital interest in developing a market internationally for the sale of its armoured vehicles, whether through Bear Head Industries or otherwise. From Thyssen's perspective, international would include Canada. Mr. Schreiber's interests coincided with those of Thyssen.

Mr. Mulroney's Watching Brief / United Nations Concept

Mr. Mulroney testified that the term "watching brief" was not mentioned at the Mirabel meeting, but that he placed this construction on his mandate. According to him, he had to "sit down and kind of figure out"⁶⁰ what he could "constructively and usefully do"⁶¹ for Mr. Schreiber because they had not specified his mandate during the course of the meeting. According to Mr. Mulroney, "in the fullness of time it was very clear to me that [Mr. Schreiber] was describing a watching brief, whereby I would, under fairly general conditions, do my very best to promote the interests of Mr. Schreiber internationally."⁶²

Mr. Mulroney testified that, before any decisions on purchases could be made by the United Nations, it would be important to approach the P5 – the five permanent members of the Security Council (the United States, the United Kingdom, China, Russia, and France) – because the Security Council constituted the "deciding body of the United Nations" and the five permanent members "are the dominant players," a position that gives them "extraordinary influence."⁶³ He noted that the veto power possessed by the P5 enables them to sponsor or "kill" initiatives that emerge during meetings at the Security Council.

In answering a question asked by Mr. Pratte, Mr. Mulroney stated that, while he was prime minister, he had developed relationships with the leaders of the countries that constitute the P5. Mr. Mulroney provided an example of the nature of these relationships by referring to an occasion in 1992 when he was approached by U.S. secretary of state James Baker, on behalf of President George H.W. Bush and other members of the P5, to become secretary-general of the United Nations. Mr. Mulroney testified that he understood the challenge of non-standardized military equipment in multinational peacekeeping missions. As an example he cited

maintenance issues, which can often be exacerbated by the location of the mission. Mr. Mulroney noted that the absence of standardization among military vehicles was a key challenge in NATO missions as well.

In this context, Mr. Mulroney said he developed the concept of pursuing the United Nations Security Council through the P5 in an attempt to replicate NATO's efforts regarding the standardization of equipment. He acknowledged that, although this concept was still considered to be unorthodox, a trend was developing toward standardization. In his concept, Mr. Mulroney envisioned a time when Thyssen vehicles would be purchased through the United Nations. There was still considerable opposition to the idea of the UN having its own forces, but he did not believe that this reluctance was insurmountable.

Mr. Mulroney intended to meet with the members of the P5 and "then take their considered views, if they were favourable ... to the Secretary General and ask him if he would consider taking this to the members of the P5 for their consideration."⁶⁴ He noted that it was necessary first to meet with members of the P5 rather than directly with the UN secretary-general because the secretary-general is not a decision-maker. That role, rather, is to execute policy that has been determined by members of the P5 and the Security Council.

Mr. Mulroney testified that, at this time, he looked at his schedule and noted that he had already arranged a business trip to China in October 1993. Once again he examined the documentation he had received from Mr. Schreiber and, he explained, "staring me in the face is the vehicle with white paint on it and big United Nations markings all over it."⁶⁵ Even though China had never been involved in the UN peacekeeping process, Mr. Mulroney stated that, as a member of the P5, it had always taken a strong interest in the United Nations. He stated that he "figured well, maybe what I could do here is see how I can get the United Nations Security Council, through the P5, involved in this and I'm going to try – because I am going to China, I am going to begin there as a member of the P5 by sounding them out on this."⁶⁶

Mr. Schreiber, in his testimony, refuted the notion that he retained Mr. Mulroney to represent his interests internationally. When Mr. Wolson asked him whether Mr. Mulroney's "assignment" constituted an "international representation and watching brief for corporate opportunities," Mr. Schreiber responded, "Well, it never happened."⁶⁷

According to Mr. Schreiber, China was not an area that could be exploited by Thyssen. The company was unable to sell NATO equipment to Communist countries because "[i]t would never get the COCOM Order. Communist countries would never be allowed to buy NATO equipment. It's pure nonsense."⁶⁸ Mr. Schreiber explained that the acronym "COCOM" stands for the Coordinating Committee on Multilateral Export Controls – an organization in which the participating countries have agreed to control the export of arms. The committee excluded exports to Communist nations

and non-NATO countries alike. Mr. Lalonde supported Mr. Schreiber's evidence on this issue: he stated that, because of Canada's international agreements, it was "inconceivable"⁶ that it could export armoured vehicles to China or Russia.

I acknowledge that Mr. Mulroney did not say it was his intention to exploit China as a potential market for armoured vehicles. Rather, his concept involved the sale of armoured vehicles manufactured by Thyssen or Bear Head Industries to the United Nations. China was involved in his plan simply because it was one of the five permanent members of the Security Council at the United Nations.

MR. MULRONEY'S TRIP TO CHINA, OCTOBER 1993

On October 4, 1993, Mr. Mulroney flew to Beijing, China,⁷⁰ on a business trip with a number of representatives of a corporate client unrelated to Thyssen. The business trip was arranged before the August 27, 1993, Mirabel meeting with Mr. Schreiber.

Mr. Mulroney stated that he had met Mr. Schreiber only a month before at Mirabel Airport and that he "decided to take advantage of the fact that I was going to be there for 10 or 11 days to find out if something helpful might be done there."⁷¹ Mr. Mulroney's schedule for his trip to China lists several meetings, though none of them had been specifically arranged to discuss his work for Mr. Schreiber.

Mr. Mulroney met with Fred Bild, the Canadian ambassador to China, in Beijing on October 5, 1993. When Mr. Pratte asked Mr. Mulroney if he discussed the business he intended to conduct while in China with the ambassador, he responded, "Well, perhaps in a general fashion, but it was for private clients and that's the way you tend to conduct it."⁷² Mr. Mulroney did not raise his concept involving the acquisition by the United Nations of military vehicles with Mr. Bild.

Later on the same day, Mr. Mulroney and the businesspeople who were with him met with Mr. Wei Ming Yi, the chairman of CITIC (China International Trust and Investment Company), the largest development corporation in China. Mr. Mulroney could not recall whether he raised Mr. Schreiber's interests at this meeting.

Mr. Mulroney and the representatives of his corporate client also met that same day with Mr. Liu Huaqiu, the vice-minister of foreign affairs of the People's Republic of China.⁷³ Mr. Mulroney knew Liu Huaqiu well. In reply to a question from Mr. Pratte, Mr. Mulroney could not recall speaking to Liu Huaqiu about his concept involving the United Nations. He did say, however, that Liu Huaqiu was "the kind of person" with whom he would have begun informal discussions on behalf of Mr. Schreiber regarding his concept that involved the United Nations.

Of interest, six days after being questioned by Mr. Pratte, while being questioned by Mr. Wolson, Mr. Mulroney contradicted his earlier testimony. On this occasion he said he did recall having a "preliminary conversation" with Mr. Liu Huaqiu regarding Mr. Schreiber's interests. Mr. Mulroney testified that the conversation would have been

informal – one where he asked questions and sought advice regarding his concept. According to Mr. Mulroney, the response from Mr. Liu Huaqiu was “noncommittal,” though he found the concept “interesting.”

On the evening of that same day, October 5, 1993, Mr. Mulroney and the business people accompanying him attended a banquet hosted by Mr. Zhu Rongji, the vice-premier of the People’s Republic of China, at the Great Hall of the People. Mr. Mulroney stated that, on Zhu Rongji’s invitation, he met with his host privately approximately half an hour before the banquet. He said that Mr. Bild did not attend this meeting. According to Mr. Mulroney, he raised “this matter with the United Nations” with Zhu Rongji “in a private general fashion.”⁷⁵ Mr. Mulroney stated that he was not “expecting any definitive answers” at that point, nor did he receive any.⁷⁶

Mr. Mulroney sat beside Zhu Rongji for four hours at the banquet, where the conversation ranged widely over many topics, including the corporate interests Mr. Mulroney was seeking to advance. In his testimony, Mr. Mulroney was unable to recall specific details of this discussion, which occurred 16 years earlier. However, he did remember raising what he thought he could do relative to the Thyssen issue and asking Mr. Zhu Rongji’s advice, “given China’s very powerful position at the United Nations.”⁷⁶ Mr. Mulroney testified that Mr. Zhu Rongji did not appear “unfriendly to the idea.”⁷⁷ Mr. Mulroney stated that he had successful experiences with other clients’ matters by raising their interests in such forums.

According to Mr. Mulroney, Mr. Bild was not seated near him. If the ambassador were at the banquet, Mr. Mulroney said, he would have been elsewhere in the hall.

On October 6, 1993, Mr. Mulroney met with Mr. Rong Yiren, the vice-chairman of the state for the People’s Republic of China. At that meeting he said he discussed the mandate relating to Thyssen in a general way. He emphasized that, during all his meetings in China, he did not ask whether the Chinese would be interested in purchasing the Thyssen vehicle for themselves – that was not the purpose of his visit.

Mr. Mulroney stated that, if his UN concept had come to fruition, there would not have been a sale to China but to the United Nations. He saw this sale as a “distinct possibility,” despite the fact that the United Nations had financial difficulties. He acknowledged that no one was certain who would buy the equipment, but his idea was to bring the Thyssen matter to the attention of the secretary-general, along with a business plan and supporting information that would assist him in presenting it to the Security Council. Mr. Mulroney testified that, if the Security Council supported the plan, it would be referred back to the secretary-general and then to the United Nations’ Peacekeeping Division. According to Mr. Mulroney, he was meeting and conversing with the Chinese “simply to begin the process of sounding out the terrain for a more comprehensive approach later.”⁷⁸

Mr. Mulroney testified that, by December 1993, despite not having been given specific instructions by Mr. Schreiber, he had “an embryonic mandate that I was

constructing myself” – to assist internationally on the Thyssen project through the United Nations.⁷⁹ He did not report to Mr. Schreiber immediately on his return from China to Canada in October 1993, but, as I will discuss later in this chapter, he testified that he reported to him on the China trip when he met him at the Queen Elizabeth Hotel on December 18, 1993.

Initially Mr. Mulroney testified that he could not recall with certainty whether he called Mr. Doucet when he returned from China. Later, during the course of giving evidence before me, he said that he got “back to Canada, which is basically the first time that I am able to set foot in my law firm on a sustained basis, and it was during that timeframe, I am sure that I called Fred and said: Look, I’ve just gotten back from China, and here is what has taken place.”⁸⁰

Mr. Doucet contradicted Mr. Mulroney’s evidence about reporting to him following the trip to China in October 1993. When cross-examined by Mr. Auger, he agreed with the suggestion that he first heard of Mr. Mulroney’s work in China at the meeting at the Pierre Hotel in New York. That meeting did not occur until December 8, 1994.

Evidence of Mr. Bild

Fred Bild was Canada’s ambassador to China from 1990 to 1994. He occupied this position when Mr. Mulroney travelled there on two occasions, in October 1993 and January 1994.

Mr. Bild testified that his diplomatic career began in 1961. He had many years of service at diplomatic posts for Canada, including as ambassador to Thailand, with accreditation for Vietnam, in 1979. From 1987 to 1990 he was the assistant deputy minister of foreign affairs.

In October 1993 Mr. Bild met Mr. Mulroney and a group of Canadian businesspeople, and he attended several functions in Beijing with them. According to Mr. Bild, he and Mr. Mulroney had a conversation in advance of their arrival, and Mr. Mulroney provided him with a general overview of the purpose of his trip. Mr. Mulroney told Mr. Bild that the various matters with which he would be dealing looked very promising, but they did not discuss the substance of those matters. Mr. Bild testified that Mr. Mulroney was concerned rather with the individuals they were going to meet and the circumstances surrounding the meetings.

Commission counsel Evan Roitenberg asked Mr. Bild if Mr. Mulroney had mentioned that he would be discussing United Nations peacekeeping, the use of armoured vehicles for peacekeeping, or anything of that sort. Mr. Bild responded, “Not at all, because it would have sent up a whole lot of flags in our embassy, and the whole visit would have taken a different turn, for us anyways.”⁸¹

Mr. Bild recalled attending certain meetings as outlined on Mr. Mulroney’s agenda. He said he might have attended other meetings, but he could not remember them specifically, and he did not keep a record pertaining to this visit.

With reference to October 5, 1993, Mr. Bild did not think a breakfast meeting took place with Mr. Mulroney, as set out in Mr. Mulroney's agenda, nor did he remember receiving Mr. Mulroney's group at the embassy at the outset of their trip. As he recalled the events, he met with Mr. Mulroney and two senior members of the group either the night they arrived or the following day at their hotel.

Mr. Bild attended the meeting with Liu Huaqiu and the meeting with Mr. Shi Dazheng, the minister of electric power, on October 5, 1993. He also attended the banquet hosted by Zhu Rongji at the Great Hall of the People later that day, which he characterized as "formal." According to Mr. Bild, the banquet took place in one of the smaller halls and no more than 30 to 40 guests were there.

With reference to the meetings on October 6, 1993, Mr. Bild attended the luncheon meeting hosted by Rong Yiren as well as the banquet hosted by the leader of the delegation accompanying Mr. Mulroney in China.

Mr. Bild testified that there was no discussion at either the meeting with Liu Huaqiu or the banquet hosted by Zhu Rongji relating to light armoured vehicles, the United Nations, or peacekeeping matters. Although Mr. Bild did not hear all the conversations at the banquet, he was not aware of any serious conversation other than when Mr. Mulroney spoke about various appointments he made during his career. Mr. Bild explained that Mr. Mulroney sat to the right of Zhu Rongji at the banquet, while the other most important Canadian was to Zhu Rongji's immediate left. Mr. Bild was sitting "just beyond them," and there was an interpreter behind each pair. If there had been a brief conversation between Mr. Mulroney and Zhu Rongji at a conceptual level involving the UN, peacekeeping, and the need for standardized military vehicles, a discussion that Mr. Mulroney sought to keep private, Mr. Bild said that "no matter how theoretical an approach, he [Zhu Rongji] would note it down, or one of his staff would note it down somewhere, and it would have to be raised within some of the hierarchy in China."⁸²

When asked by Mr. Pratte whether Zhu Rongji would not have acceded to a request by Mr. Mulroney to keep a conversation private, Mr. Bild stated: "There is no such thing as private when you are talking to a Vice-Premier." He added: "If it's an issue which is going – especially as this was going to affect – at a minimum it's going to affect the Chinese economy or China's relationship with the UN. It is not a private matter."⁸³

Mr. Bild testified that, approximately 15 minutes before a banquet was scheduled to begin, the major guests were typically invited into a separate room where they "have chats." This process, while sounding very informal, is organized so that individuals sit in a semicircle around the host and the main guest. According to Mr. Bild, "[I]f you talk business, it is heard by everybody there."⁸⁴ Contrary to Mr. Mulroney's evidence, Mr. Bild said he was present at the private meeting attended by Mr. Mulroney before the banquet.

According to Mr. Bild, Mr. Mulroney never raised with him his desire to broach with Chinese officials the subject of UN involvement with light armoured vehicles or

anything of the sort. "If that subject had been raised," he said, "I would have had to get my political section to put one officer on it from then on, for a matter of weeks, and we would have had to rearrange all of the duties. It's something that none of us would have forgotten."⁸⁵ Mr. Bild testified that "anything that approached military cooperation, in whatever way, even in the context of the UN, we would have had to start sending reports back to Ottawa, comparing analyses with the desk here in Ottawa. It would have set a whole new procedure in train. None of that happened."⁸⁶

Mr. Bild acknowledged that, if an individual approached the government on an issue that had nothing to do with Canadian interests aside from business interests and directions being sought, he would not necessarily have been privy to it. He stated, however, that in the case of a former prime minister dealing with an initiative involving co-operation in the military field, a number of agencies would have been involved, and the matter would have come to the attention of the embassy. According to Mr. Bild, the more vague the discussion, the more questions the Chinese would have had.

I asked Mr. Bild whether he would have heard from the Chinese if Mr. Mulroney had discussed peacekeeping issues with them. He responded: "Most likely ... I can't say that it is an absolute certainty because there is no compulsion on them to do so ... But judging by my whole experience, that is what would have happened." Mr. Bild testified that he heard "nothing whatsoever" from the Chinese. He continued by saying that such information would not necessarily come to him but would come to the embassy, and once that happened he would have known about it immediately because it would have caused "all kinds of turmoil."⁸⁷

The testimony Mr. Bild gave before me was consistent with what he told journalists from the *Globe and Mail*. That newspaper published an article on the subject on February 11, 2008.⁸⁸

I was very impressed by Mr. Bild's evidence. A man with a distinguished career in the Canadian foreign service, he was the ambassador to China at the relevant times for this Inquiry and had been appointed to that position by Mr. Mulroney's government. In my view, Mr. Bild was a totally independent, credible witness whose evidence I found logical and convincing.

It strikes me as incongruous that Mr. Mulroney, with his background and experience as a politician and head of government, would not have approached the Canadian Embassy in Beijing for assistance if he intended to deal with the Chinese on behalf of Mr. Schreiber – even though those dealings were at an early, exploratory stage.

Mr. Mulroney made another trip to China, in January 1994, but he did not suggest that he had discussed Thyssen or peacekeeping issues with the Chinese on that trip. On the basis of all the evidence I heard and read relating to Mr. Mulroney's two trips to China, one in October 1993 and the other in January 1994, I am unable to conclude that Mr. Mulroney, as asserted by him, spoke to the Chinese leaders on behalf of Mr. Schreiber.

Queen Elizabeth Hotel Meeting, December 18, 1993

I accept that the second meeting between Mr. Schreiber and Mr. Mulroney occurred on December 18, 1993, at the Queen Elizabeth Hotel in Montreal (Queen Elizabeth meeting). Mr. Mulroney testified that, during the course of that meeting, he received \$75,000 in cash in an envelope as the second payment on the retainer; Mr. Schreiber maintains that he paid Mr. Mulroney \$100,000.

Mr. Schreiber's Account

According to Mr. Schreiber, Mr. Doucet arranged the Queen Elizabeth meeting at his request. He did not provide Mr. Doucet with any reason why he wished to meet with Mr. Mulroney because there was "no need to explain anything." Mr. Schreiber testified that Mr. Doucet sent a message to his (Mr. Schreiber's) secretary with the particulars of the meeting. He could not recall whether he spoke to Mr. Doucet directly about the meeting.

As Mr. Schreiber testified, I noted significant confusion on his part as to when the second meeting took place. The confusion probably arose from entries in his agenda which may not have been correct. Mr. Schreiber's agenda for December 18, 1993, at 11 o'clock has this notation: "Brian home."⁸⁹ In his interview with Commission counsel, Mr. Schreiber stated that this entry refers to the original date for a meeting at Mr. Mulroney's home. He explained that he was supposed to meet Mr. Mulroney at his home in Westmount on that Saturday (December 18), but, owing to time constraints, they agreed to meet instead at the Queen Elizabeth Hotel on December 17, 1993.

Mr. Schreiber's evidence before me was markedly different from what he had said during his interview with Commission counsel. When he testified before me, Mr. Schreiber said that he met with Mr. Mulroney not on December 17, as he had told Commission counsel, but on December 18, 1993. He said it could not have been December 17 because he had a meeting that day with André Ouellet, the minister of external affairs. He testified that it was impossible that he met with Mr. Mulroney on December 17 because there was no time between his arrival at the hotel and his meeting with Mr. Ouellet. Mr. Schreiber further testified that, despite an entry in his agenda showing December 17, 1993, at 1500, "Queen Elizabeth 2710 [Mr. Schreiber's room number at the Queen Elizabeth],"⁹⁰ he met with Mr. Mulroney on December 18, 1993.

On the basis of Mr. Schreiber's evidence and that of Mr. Mulroney, which I discuss later in this chapter, I have concluded that the meeting attended by the two men at the Queen Elizabeth Hotel in Montreal took place on Saturday, December 18, 1993.

Mr. Schreiber testified that he rented a room at the Queen Elizabeth Hotel on the Gold Key Floor and stated that the meeting took place in the public lounge on that floor, which is reserved for guests from that floor. Only Mr. Schreiber and Mr. Mulroney were present at this meeting. According to Mr. Schreiber, the meeting lasted for 45 minutes or an hour. He recalled that it occurred in the late morning about 11 o'clock. He had another meeting later that day and, in the evening, was departing for Germany.

In his testimony, Mr. Schreiber stated that, between the Mirabel and the Queen Elizabeth meetings, he did not call or meet Mr. Mulroney to ask about his progress on the project for which he had retained him. According to Mr. Schreiber, his reasons for asking for the Queen Elizabeth meeting were that he and Mr. Mulroney had a very good relationship, the timing of the meeting was close to Christmas, and the Progressive Conservatives had recently lost the election. Further, he testified, he "had all the confidence that Mr. Mulroney could help me in Quebec with all his influence." Mr. Schreiber stated, "It's not my habit to bother people for money."⁹¹

According to Mr. Schreiber, he and Mr. Mulroney spoke about the Bear Head Project, which he hoped would now be located in the province of Quebec, and Mr. Schreiber's meeting with Mr. Ouellet the previous day. Mr. Schreiber also thanked Mr. Mulroney for the framed photograph he had sent him, as promised at Harrington Lake.

Mr. Schreiber testified that he was excited and happy. He was pleased with the meeting he had attended with Mr. Ouellet. According to Mr. Schreiber, he shared this excitement with Mr. Mulroney and discussed how things were progressing on the Bear Head Project with the Liberal government and with the assistance of Mr. Lalonde. Mr. Schreiber testified that Mr. Mulroney was also excited and that he stated, "Hopefully it works."⁹²

According to Mr. Schreiber, Mr. Mulroney never told him during the course of the Queen Elizabeth meeting that he had recently travelled to China. He also said that Mr. Doucet never told him that Mr. Mulroney travelled on behalf of Bear Head Industries to China.

Mr. Schreiber did not ask Mr. Mulroney about his progress on the Bear Head Project in Quebec. He said that he and Mr. Mulroney understood that they would have to wait and see what the next developments would be. When the moment arrived for him to use Mr. Mulroney's help, he said that he would call on him. There was no need to ask Mr. Mulroney what he was doing at the time, adding, "He was getting organized with his life."⁹³

According to Mr. Schreiber, although Mr. Mulroney could not assist with obtaining a deal with the new Liberal federal government, he thought he still had the capacity to assist "behind the curtain," both federally and provincially. It was known that Mr. Mulroney had friends in the Liberal Party, including Paul Martin.

Mr. Schreiber did not ask Mr. Mulroney whether he could assist provincially. Mr. Schreiber remarked that the meeting with Mr. Ouellet had been so positive that there was no need to ask for Mr. Mulroney's help federally. However, he did not tell Mr. Mulroney that he would not require his assistance on the Bear Head Project. He said he was convinced that he would require Mr. Mulroney's services at sometime in the future.

Mr. Schreiber testified that the next steps for him and Mr. Mulroney would depend on whether Mr. Mulroney would be able to work in Montreal on the provincial side. This was where Mr. Schreiber felt that Mr. Mulroney would be a great asset. Mr. Schreiber did not ask Mr. Mulroney to do things provincially because, at the time, as a result of the election and the upcoming Christmas holiday, there was nothing to be done.

As for the payment, Mr. Schreiber asserted that he gave it to Mr. Mulroney with the hope "that one day Mulroney can do something for me."⁹⁴

Mr. Schreiber expressed the view that if Mr. Mulroney "would have been engaged in the pasta business a couple of years later ... he could have been a very, very, very good asset for me in that business."⁹⁵ At this point in his evidence, Mr. Schreiber referred to Bill Clinton, Arnold Schwarzenegger, and Bill Gates, suggesting that they had been in the pasta business with him for a couple of years after 1993. When pressed by Mr. Wolson, Mr. Schreiber admitted that none of those men was ever in business with him.

Mr. Schreiber responded affirmatively to Mr. Wolson's assertion that he had a "pasta business" in 1998. When Mr. Wolson asked him why he would pay Mr. Mulroney in 1993 for a pasta business that did not exist until 1998, Mr. Schreiber responded, "It could have been something else."⁹⁶

While Mr. Schreiber was not able to recall at what point during the meeting he provided Mr. Mulroney with the payment, he knew for certain that he handed over \$100,000 in \$1,000 bills in an envelope, publicly. However, as Mr. Schreiber said, "When you sit in the room and hand over an envelope, who knows what is in the envelope?"⁹⁷

According to Mr. Schreiber, Mr. Mulroney thanked him when he received the envelope and was "very happy." He said that he told Mr. Mulroney there was \$100,000 in the envelope; that the envelope was not sealed; and that Mr. Mulroney opened it but did not count its contents.

Mr. Schreiber testified that he withdrew the \$100,000 payment from the Britan account on November 3, 1993. Mr. Schreiber testified that he is certain it was \$100,000 because he always brought that amount and because he counted it.

Mr. Schreiber did not ask Mr. Mulroney for a receipt or a statement of account, nor did Mr. Mulroney request a bank draft or a cheque.

Mr. Mulroney's Account

At one point during his testimony, Mr. Mulroney said that, in arranging for the meeting at the Queen Elizabeth Hotel, Mr. Doucet said: "I was told that [Mr. Schreiber] is in town, to return to Germany or Switzerland, and he would invite you for a cup of coffee at the Queen Elizabeth Hotel."⁹⁸ On an earlier day while testifying, Mr. Mulroney provided a somewhat different version of what Mr. Doucet had said to him about the impending meeting. On that occasion Mr. Mulroney omitted the reference to "a cup of coffee" at the Queen Elizabeth Hotel, stating that Mr. Doucet called him and said, "Look, Mr. Schreiber is back in Canada, and he would be glad of an opportunity to sit down with you."⁹⁹

Mr. Mulroney believed that the meeting took place on a Saturday, though he could not recall the date. He travelled to the Queen Elizabeth Hotel from his home. He recalled that he arrived at the coffee shop at the hotel at approximately 11 a.m. and that he noticed that other patrons were dressed in an informal fashion – thereby supporting his belief that the meeting occurred on a weekend. According to Mr. Mulroney, the meeting lasted 20 to 30 minutes.

Ogilvy Renault, Mr. Mulroney's law firm, was at that time located approximately 10 blocks from the Queen Elizabeth Hotel. Mr. Mulroney did not suggest to Mr. Doucet that Mr. Schreiber meet with him at the law firm. He stated that Mr. Doucet arranged the meeting on Mr. Schreiber's behalf for the weekend. According to Mr. Mulroney, there was nothing sinister about the Queen Elizabeth meeting: "I was invited to ... a public coffee shop in a hotel in Montreal because he was, I assume, staying there on his way back to Europe, as he had invited me to Mirabel, not to come to a hotel, but because he was there on his way back to Europe ... it was as a matter of mutual convenience."¹⁰⁰

Mr. Mulroney recalled that the meeting took place in "a large coffee shop, an ordinary coffee shop, with people milling around," but he did not recall where it was situated.¹⁰¹ The coffee shop, he stated, "was like a Tim Horton's with more expensive coffee."¹⁰² Mr. Mulroney did not know whether it was in the Gold Key section of the hotel. He believed that Mr. Schreiber was at the coffee shop when he arrived. He recalled that he and Mr. Schreiber sat at a table in the middle of the shop. Mr. Mulroney was recognized by various patrons in the shop, who approached him either for autographs or for photographs, and this attention created some commotion.

Once they had both ordered a cup of coffee, Mr. Mulroney said that the first matter they discussed was the result of the recent election. Shortly thereafter, he provided Mr. Schreiber with a "general report" on his trip to China. That report included his advising Mr. Schreiber about his idea to use the P5 of the United Nations to "see if we couldn't replicate what they were seeking to do in NATO, namely, the standardization of equipment."¹⁰³ He also told him, he said, how he had

taken advantage of his trip to China and his friendship with the leading members of the Chinese government to begin the process of sounding them out on how the concept might operate and how it might “look to the P5 later on.”

Mr. Mulroney said he was surprised that Mr. Schreiber did not appear to be particularly interested in the work he had performed in China, given that Mr. Schreiber “stood to make personally \$1.8 billion if we could have secured this major export market.”¹⁰⁴ Mr. Mulroney described Mr. Schreiber as “having fallen in love with the Liberals.” This change of heart did not come as a surprise to Mr. Mulroney, given that a new government had recently been formed. According to Mr. Mulroney, Mr. Schreiber told him that, with the Liberals in, “he had figured it out about how he was going to get this deal done, now in the East End of Montreal.”

As discussed earlier in this chapter, Mr. Mulroney said he approached the Chinese leaders as members of the P5 of the United Nations and not as a potential export market. However, as noted in the paragraph above, he also referred to China as “this major export market.” The two statements are contradictory. Because of export controls then in place, the Canadian government would never have permitted the sale of military hardware to China, and Mr. Mulroney must have been well aware of that fact. This discrepancy leads me to question Mr. Mulroney’s credibility regarding the nature of the discussions he claims he engaged in with various leaders of the Chinese government. As noted earlier, I am unable to conclude that Mr. Mulroney engaged in any discussions with the Chinese government about the concept he claims he formulated in respect of Thyssen’s vehicles.

Mr. Mulroney agreed with Mr. Wolson’s suggestion that, at the Queen Elizabeth meeting, he effectively told Mr. Schreiber how he viewed the mandate and how he could best assist. According to Mr. Mulroney, Mr. Schreiber thanked him for what he had done in China. This expression of gratitude apparently occurred despite Mr. Schreiber’s lack of interest in China.

Mr. Mulroney did not ask Mr. Schreiber whether he wanted him to continue with the work he had been doing. Mr. Mulroney testified that Mr. Schreiber told him to “please keep on going in this area.”¹⁰⁵

Mr. Mulroney testified that Mr. Schreiber presented him with a legal-sized envelope, identical to the one he had received at the Mirabel meeting. According to Mr. Mulroney, Mr. Schreiber opened his “traveling bag ... with a strap over the shoulder,” which was on the ground, and stated that he would like to give Mr. Mulroney a second payment on his retainer. Mr. Mulroney gave a slightly different version of what Mr. Schreiber said later in his testimony, where, in relation to the payment, he cited Mr. Schreiber as saying, “This is the payment for your advance retainer.”¹⁰⁶ Mr. Mulroney went on to say that he concluded from this statement that the retainer “was going to last quite a long period of time, given the trips that I was going to take, because it had come so soon after the first payment.”

Mr. Mulroney testified that, because the initial payment had been made only three or four months earlier, he did not expect Mr. Schreiber to provide him with another cash payment on the retainer. He also did not expect that subsequent payments would be in cash, despite Mr. Schreiber's telling him at Mirabel that he dealt only in cash. According to Mr. Mulroney, Mr. Schreiber did not indicate how many payments there would be.

I confess to having difficulty with Mr. Mulroney's logic. Mr. Mulroney had already received a payment from Mr. Schreiber in cash. Moreover, he testified that Mr. Schreiber had told him that, as an international businessman, he dealt only in cash. I ask myself the question, "Would one not think the more reasonable assumption to be that any further payments would, in all of the known circumstances, be made in cash?" In my opinion, the answer is obvious.

Mr. Mulroney testified that Mr. Schreiber placed the envelope on the coffee shop table "in front of everybody at the coffee shop." He confirmed that he knew the envelope contained cash. Mr. Schreiber did not say he was an international businessman at this meeting. At no point did Mr. Mulroney ask Mr. Schreiber for money. Mr. Mulroney did not have a briefcase at the meeting, nor did he place the envelope in his jacket. He left the meeting carrying the envelope in his hand.

Mr. Mulroney stated he did not hesitate when Mr. Schreiber presented him with the envelope. He "thought this was ... an unusual arrangement, but I didn't raise any objections at that time."¹⁰⁷

According to Mr. Mulroney, Mr. Schreiber wished him "'good luck,' and off we went." He said that Mr. Schreiber walked him to the door, and soon after returned to Germany.

Mr. Mulroney did not deposit in a bank the \$75,000 he says he received from Mr. Schreiber. Initially, Mr. Mulroney agreed with Mr. Wolson's suggestion that it would have been difficult to make a bank deposit on Saturday. When he was asked by Mr. Wolson why he did not deposit the \$75,000 in a bank on a Monday, a Tuesday, or whenever, Mr. Mulroney gave what I would characterize as a totally unresponsive, troubling answer when he said, "Well, I brought it home on that Saturday and I put it in the safe at home and left it there."¹⁰⁸

When referring to moving the first \$75,000 he had received from the cottage at Estérel to his home in Montreal, Mr. Mulroney said it never occurred to him that this behaviour was unconventional and that he should do something more conventional. He attributed this reaction to the fact that he was in the process of commencing his private life and did not have any support staff at the time. When asked how support staff were connected to depositing the money in a bank, Mr. Mulroney replied: if Mr. Schreiber had "visited me during business hours in my office in Montreal, and the same situation had been replicated, I think I would have said what I ought to have said: Make that a cheque and we can do some business."¹⁰⁹

I have a serious problem accepting the explanation proffered by Mr. Mulroney as to why, having accepted cash from Mr. Schreiber at hotels, whatever the amount may have been, he did not deposit it in a bank or other institution capable of taking deposits. The reason for my difficulty is that Mr. Mulroney was a sophisticated businessperson, having served as the president of a major Canadian corporation and as prime minister for nearly nine years. In my view, Mr. Mulroney's explanation that he did not have support staff is not worthy of any credence whatsoever in terms of his failure to deposit the cash into a bank or other financial institution. I confess to being surprised that he would even offer this reason as an excuse in an attempt to justify or explain his failure to deposit the cash he received into a bank or other financial institution. Making a bank deposit, whether in cash or otherwise, is hardly a task of monumental proportions. Certainly it is something that Mr. Mulroney could easily have done himself, were he so inclined. Mr. Mulroney's explanation regarding lack of support staff, I regret to say, becomes even less credible with respect to the second and third payments, made on December 18, 1993, and December 8, 1994, respectively, when Mr. Mulroney had support staff at Ogilvy Renault.

Mr. Doucet's Account

Mr. Doucet testified that he had no recollection of arranging the Queen Elizabeth meeting despite the entry relating to it in his diary. He agreed with the suggestion made by Mr. Wolson that, based on his diary entries, there was a meeting on December 17, 1993, between Mr. Schreiber and Mr. Mulroney at the Queen Elizabeth Hotel. (I pause to note my previous finding that the meeting in question took place on December 18, 1993.) He was unable to say whether references to the meeting were contained in his diary because he was aware of its existence or because he had in fact arranged the meeting.

On December 14, 1993, a written message from Mr. Doucet's office went to Mr. Schreiber, providing Mr. Mulroney's home address in Montreal. Mr. Doucet acknowledged that it is fair to deduce that he was in a position to arrange a meeting, but he did not recall doing so.

Mr. Doucet did not attend the Queen Elizabeth meeting, nor did he receive a briefing about it from Mr. Schreiber.

Pierre Hotel Meeting, December 8, 1994

On December 8, 1994, Mr. Schreiber and Mr. Mulroney met at the Pierre Hotel in New York City in Mr. Schreiber's suite. Mr. Doucet was present during the entire meeting. After discussions in the suite, all three men proceeded to a restaurant in the hotel, where they joined Mrs. Schreiber, Elmer MacKay, and Mrs. MacKay for lunch. In their evidence before the Commission, the four principals to this meeting – Mr. Schreiber,

Mr. Doucet, Mr. MacKay, and Mr. Mulroney – seldom agreed on the basic facts: who made the invitations and arrangements for the meeting, the subjects discussed there, and what happened at the lunch they shared afterwards.

Mr. Schreiber's Account

Mr. Schreiber confirmed that, before the Pierre Hotel meeting, he withdrew \$50,000 from the Britan account in the Swiss Bank Corporation in Zurich on each of two separate occasions, July 21, 1994, and November 21, 1994. Further, Mr. Schreiber also confirmed that it was this money that he subsequently presented to Mr. Mulroney at their meeting at the Pierre Hotel on December 8, 1994.

In explaining the gaps between the withdrawals and the payments to Mr. Mulroney, Mr. Schreiber stated that he resided in Munich at the time and that he could withdraw cash from the account only when he travelled to Switzerland. He indicated that he would make the withdrawals while he was in Zurich, return home, place the money in a safety deposit box, and later take the money with him to Canada.

According to Mr. Schreiber, he did not meet with or call Mr. Mulroney to ask for an update or progress report during the 12-month period between the Queen Elizabeth Hotel meeting and the Pierre Hotel meeting. He continued to maintain that Mr. Mulroney was not involved in an international mandate, though I have already made note earlier in this chapter of the inconsistent evidence Mr. Schreiber gave me on this issue. At the federal level in Canada, Mr. Schreiber said that he was not interested in a report because there was nothing Mr. Mulroney could do now that a Liberal government was in power in Ottawa: Mr. Mulroney would have no influence there. Similarly at the provincial level in Quebec, Mr. Mulroney could do little until Bear Head Industries had an agreement with the federal Department of National Defence to purchase vehicles. In September 1994 the Parti Québécois was elected as the government in Quebec. Mr. Schreiber acknowledged that he did not expect Mr. Mulroney to have influence with Jacques Parizeau, the newly elected premier, but he stated that, given Mr. Mulroney's reputation and connections, he expected him to have influence over whoever was involved in discussions about the Bear Head Project – even at the municipal level.

The White Paper on Canada's national defence policy was released on December 1, 1994, and included a section outlining the Canadian Armed Forces' need for new armoured personnel carriers.¹¹⁰ Bear Head Industries soon contacted the government yet again, expressing a desire for a competitive bidding process for this program and promoting its product.¹¹¹ In his testimony before me, Mr. Schreiber noted that, at this point, the situation with the Bear Head Project in Quebec looked promising.

In December 1994 Mr. Schreiber resided in Germany. He was planning to attend a meeting in New York of the Atlantic Bridge Association – a group of influential

businesspersons from Germany and North America. Mr. Schreiber stated that he spoke with Mr. Doucet, informing him that he was travelling to New York and, because a year had passed since their last encounter, he was prepared to meet with Mr. Mulroney if that proved to be convenient. Mr. Doucet confirmed that the meeting would be convenient.

Mr. Schreiber testified that the purpose of the meeting was to make the third payment to Mr. Mulroney and to exchange thoughts with him about the project in Montreal. He denied that he informed Mr. Doucet about a plan to have a reception or luncheon for Mr. MacKay and his wife. Mr. Schreiber confirmed, in answer to a question from Robert Houston, counsel for Mr. Doucet, that Mr. Doucet was not invited to New York and that he was surprised to see him when he arrived.

According to Mr. Schreiber, he met privately with Mr. Mulroney and Mr. Doucet in a room at the Pierre Hotel. The meeting apparently began at 11 a.m. and ended at noon or soon after. They shared pleasantries, spoke about investigative journalist Stevie Cameron's recent book *On the Take: Crime, Corruption and Greed in the Mulroney Years*, and discussed the situation in Quebec, their expectations for Montreal, and the White Paper.

Mr. Schreiber agreed that Mr. Mulroney brought a copy of the White Paper with him to the meeting and that it referred to NATO. He acknowledged that Mr. Mulroney might have also discussed NATO and the fact that the future of the Bear Head Project depended on export to international markets. He stated, however, that this international aspect would be important "only if Canada would be involved." According to Mr. Schreiber, "Thyssen would not have needed anybody in Canada if they wanted to export their product out of Germany." However, he then agreed with Mr. Wolson's suggestion that Canada had better access to certain countries than Germany – for example, to Commonwealth countries.¹¹²

In addition to these discussions, Mr. Schreiber said that he may also have briefly mentioned Archer Daniels Midland, because he had received that company's brochures from Mr. Mulroney. Mr. Schreiber said that, although Mr. Mulroney could not provide any services pertaining to Archer Daniels Midland at the time, he hoped he (Mr. Mulroney) might be helpful in the future.

According to Mr. Schreiber, he did not ask Mr. Mulroney for a progress report at the meeting, nor did Mr. Mulroney update him regarding work he had undertaken, because he was unable to do anything at the time. Mr. Schreiber stated that Mr. Mulroney said nothing about international work he had done relating to China, Russia, France, or the United States. As discussed earlier in this chapter, Mr. Schreiber maintained in his testimony that Thyssen was unable to sell NATO equipment to Communist countries because the requisite order from the Coordinating Committee for Multilateral Export Controls (COCOM) would never have been granted.

Mr. Schreiber contended that Mr. Doucet was talking on the phone for some time during the discussions between him and Mr. Mulroney.

At the conclusion of the meeting, Mr. Schreiber said, he gave Mr. Mulroney an envelope containing \$100,000 in Canadian \$1,000 bills. As he handed the envelope to Mr. Mulroney, he said, "Here, the next instalment I brought for you." Mr. Mulroney did not say anything in response.¹¹³ As this transaction took place, he said, Mr. Doucet was looking out the window. According to Mr. Schreiber, Mr. Mulroney put the envelope containing the cash into a newspaper, folded it, and went to the washroom. With reference to the payment on December 8, 1994, Mr. Schreiber conceded in response to a question I asked him that he paid Mr. Mulroney despite the fact that Mr. Mulroney was doing nothing for him at the time. Mr. Schreiber said he had no complaints that Mr. Mulroney had done nothing for him, that he paid Mr. Mulroney \$300,000 up to the end of 1994 in the hope that something might come together in the future, and that they had an understanding in this regard. He went on to say that, after 1994, he stopped paying Mr. Mulroney for doing nothing.

On this same point, I observe that Mr. Schreiber stated in his affidavit of November 7, 2007, that they agreed that Mr. Mulroney would continue to be available to assist him in "other business endeavours."¹¹⁴ I note that this statement does not limit any assistance to an international mandate.

After the meeting concluded, the three men went down to the hotel dining room to meet with Mr. Schreiber's wife and the MacKays. Mr. Schreiber said he had arranged Mr. Mulroney's attendance as a surprise for Mr. MacKay, who had recently married Mrs. MacKay. Mr. Schreiber stated that he never intended the lunch to be a large celebration and that only the six people mentioned above were present. In his estimation, the lunch lasted for one or one-and-a-half hours.

Mr. Doucet's Account

Mr. Doucet's evidence is that he arranged the meeting between Mr. Schreiber and Mr. Mulroney on December 8, 1994, at the Pierre Hotel at Mr. Schreiber's request. Mr. Schreiber's stated purpose for the meeting was that he wanted to obtain a progress report from Mr. Mulroney and that a meeting in New York would be convenient for him. Mr. Schreiber also wished to surprise Mr. MacKay and his new wife by having Mr. Mulroney attend the celebratory luncheon he was planning for them on the day of the meeting. Mr. Doucet testified that Mr. Schreiber invited him to both the meeting and the luncheon.

Mr. Doucet stated that the reason for his attending these functions never crossed his mind. He did not feel awkward sitting in on a meeting where business he was not involved in was being discussed. He noted that Mr. Mulroney was aware he was there, and Mr. Schreiber presumably did not have a problem with his presence.

According to Mr. Doucet, the meeting began around 10:45 a.m. He sat next to Mr. Mulroney, and Mr. Schreiber sat across from them. Mr. Doucet testified that he sat throughout the meeting and that at no time did he rise to speak on the phone.

During the course of the meeting, Mr. Mulroney and Mr. Schreiber shared documents with each other. In answer to a question from Mr. Wolson, Mr. Doucet confirmed that, on December 5, 1994, he had forwarded a fax to Mr. Mulroney's secretary from Mr. Alford regarding the White Paper recently released by the Department of National Defence.¹¹⁵ Mr. Doucet said the White Paper addressed aspects that had an impact on the Bear Head Project. Mr. Doucet asked the secretary to place the fax in Mr. Mulroney's file for the Pierre Hotel meeting. Mr. Doucet recalled that they discussed the White Paper at the meeting, but he was not able to remember any details of that aspect of the discussion.

According to Mr. Doucet, subsequent to the sharing of the documents, Mr. Mulroney walked Mr. Schreiber through his international travels, specifically his trips to China, Russia, and France. Mr. Mulroney highlighted the importance of those countries because they were members of the P5 and because of the influence they have over operations of the United Nations when they provide their support.

Mr. Mulroney then went on to report on his meetings with the leaders in China, President Boris Yeltsin of Russia, and President François Mitterrand of France. This was the first time that Mr. Doucet had heard of Mr. Mulroney's work in these three countries. Both Mr. Mulroney's report and the potential opportunity it presented impressed Mr. Doucet. In response to a question from Mr. Wolson, Mr. Doucet said that, as far as he was aware, Thyssen could not sell equipment to China or Russia.

Mr. Doucet did not recall hearing any reference from Mr. Schreiber to anything that Mr. Mulroney would be doing in Canada at that time, or at any time. He also said that the meeting had absolutely nothing to do with Airbus or Air Canada. He described the atmosphere during the meeting as being "very warm, very cordial, very appreciative on the part of Mr. Schreiber and very eloquent on the part of Mr. Mulroney."¹¹⁶ As best as Mr. Doucet could tell, Mr. Schreiber was "responding favourably to the discussions."¹¹⁷

At the end of the meeting, Mr. Schreiber made a payment to Mr. Mulroney in Mr. Doucet's presence. Mr. Schreiber handed what Mr. Doucet recalled was a legal-sized envelope to Mr. Mulroney, saying, "There, this is in payment of your ongoing expenses and fees." Mr. Schreiber did not say that the payment had to do with either a loan or an advance. Mr. Mulroney subsequently put the envelope in his briefcase. Although he did not ask Mr. Mulroney what was in the envelope, Mr. Doucet assumed the payment was in the form of a cheque. He said he had never asked Mr. Mulroney about the amount of money he was being paid or the form of payment.

Mr. Doucet recalled that the meeting ended "somewhere around noon, maybe 12:15," having a duration of around one-and-a-half hours. After the meeting, Mr. Schreiber went down to the luncheon. Mr. Doucet said that, before he and Mr. Mulroney followed, Mr. Mulroney freshened up in the washroom. They then joined Mr. Schreiber, his wife, and the MacKays in the dining room. Mr. Doucet said

the MacKays were “duly surprised” at the appearance of Mr. Mulroney. The luncheon lasted about an hour and a half, or perhaps until 2:30 p.m. or 3 p.m.

Mr. Doucet stated that he was unsure whether he and Mr. Mulroney were together for all the time between the end of the luncheon and their leaving for the airport at 3:45 p.m. He stated that he did not go anywhere with Mr. Mulroney other than to the airport, and that they did not make any stops.

Mr. MacKay’s Account

According to Mr. MacKay, Mr. and Mrs. Schreiber invited him and his wife to be their guests in New York in December 1994. They requested their company both at the Atlantic Bridge function on December 7 and, to celebrate their recent marriage, at lunch at the Pierre Hotel on December 8.

When questioned by Mr. Roitenberg, Mr. MacKay confirmed that he and his wife were at the Pierre Hotel on December 8, 1994, and that Mr. Mulroney and Mr. Doucet joined them. He agreed with Mr. Roitenberg’s suggestion that he had no idea that Mr. Mulroney and Mr. Doucet were coming for the luncheon. Both men ordered something that could be prepared quickly, he said, then left together before the others had finished their lunch. In his recollection, Mr. Mulroney and Mr. Doucet said they were leaving for the airport.

Mr. MacKay knew nothing of the meeting that occurred immediately before the luncheon. No mention was made of it during the lunch, and neither Mr. Mulroney nor Mr. Schreiber referred to the payment that had just occurred. Notwithstanding Mr. MacKay’s involvement for years in pushing the Bear Head Project forward, he testified that he would not expect Mr. Schreiber or Mr. Mulroney to mention the meeting they had just had at the luncheon. Mr. MacKay said that he first learned that Mr. Mulroney had been paid by Mr. Schreiber when he read it in the newspaper.

Mr. Alford’s Evidence

Mr. Alford testified that he attended the Atlantic Bridge conference in New York in December 1994. When questioned by Mr. Roitenberg, he confirmed that, in the weeks before this conference, he had been advised that the government was producing a White Paper on defence policy and that he had then obtained a copy of it.

When Mr. Alford familiarized himself with the White Paper, he noted that parts of it were directly relevant to work in which he was engaged. The White Paper mentioned the need, on behalf of the Canadian Forces, to purchase new armoured personnel carriers. This purchase was intended to fit with the changing orientation of the Armed Forces, focusing on the United Nations and other multinational missions. Mr. Alford viewed this objective with a certain measure of optimism because it was exactly in line with the product Thyssen was trying to promote to the government. Moreover, he said, Bear Head had agreed “not to discuss the Canadian requirement

and [to] let the government procurement be scheduled and then address it as a competitor.”¹¹⁸ The White Paper created hope that the government was moving forward simultaneously on two fronts: on both the international market and on possible procurement for Canada itself.

Mr. Alford faxed a copy of excerpts from the White Paper to various people, including Mr. Schreiber, on December 1, 1994, at 4:34 p.m., and to Mr. Doucet, at 4:52 p.m. He explained that he wanted to communicate the opportunity presented by the White Paper as quickly as he could to those involved in the Bear Head Project. Mr. Alford agreed with Mr. Roitenberg that it was reasonable to suggest that Mr. Schreiber contacted him and asked him to forward the document to Mr. Doucet, bearing in mind the 18-minute lag between the two faxed messages. However, Mr. Alford pointed out that, when a White Paper is released, Thyssen / Bear Head Industries would receive many calls from consultants who had previously been involved in the project or who would like to work with them. Mr. Alford went on to suggest that he could have faxed the document to Mr. Doucet at his request or on his own initiative.

Mr. Mulroney’s Account

According to Mr. Mulroney, Mr. Doucet called him in advance of the Pierre Hotel meeting and stated that Mr. Schreiber was going to be in New York for a German-American banquet and would be happy to see him if he (Mr. Mulroney) were in New York at the time. Mr. Doucet told Mr. Mulroney that Mr. Schreiber was arranging a luncheon for Mr. MacKay and his new wife in New York; that both Mr. Doucet and Mr. Mulroney were invited; and that Mr. Mulroney’s presence was intended to be a surprise for the MacKays.

Mr. Mulroney said that, because the timing was convenient, he and Mr. Doucet flew down to New York together for the day on December 8, 1994. They arrived at Mr. Schreiber’s suite at the Pierre Hotel at 11 a.m. Mr. Mulroney had not spoken with Mr. Schreiber since their meeting at the Queen Elizabeth Hotel, which was, I note, approximately one year earlier. In Mr. Mulroney’s estimation, the meeting lasted about 45 minutes to an hour. Mr. Doucet sat next to Mr. Mulroney on a sofa, and Mr. Schreiber sat across from them.

According to Mr. Mulroney, Mr. Schreiber began the meeting by explaining he was in New York for the German-American banquet that had taken place the night before. They then discussed the White Paper and the changing opportunities presented by that document. Mr. Mulroney drew Mr. Schreiber’s attention to the relevant chapters of the White Paper, including portions related to defence procurement.

Mr. Mulroney said he provided Mr. Schreiber with a “fairly detailed report” on what had taken place in China and Russia (described in the next section). He told Mr. Schreiber about his plan to take the concept, as it developed, to the United

Nations, through the office of the secretary-general, “to begin the process of seeing if he would carry this forward to the Security Council for me.”¹¹⁹ At this stage, Mr. Mulroney testified, Mr. Schreiber commented, “I think that’s a great idea.” He wished Mr. Mulroney good luck and requested that, going forward, he update Mr. Doucet, who would convey progress on the work to Mr. Schreiber.

Of interest, when Mr. Mulroney was questioned by Mr. Auger, counsel for Mr. Schreiber, he testified that he did not speak to the UN secretary-general because he had not yet visited with U.S. president Bill Clinton or with either of the successive British prime ministers, John Major or Tony Blair. He went on to explain that he had “not completed my own roundup, and we got blown up by Airbus – the false Airbus affair in 1995.”¹²⁰

Mr. Mulroney stated that the Quebec element of the project was not discussed at the meeting.

As the meeting ended, Mr. Schreiber retrieved an envelope from the bedroom and handed it to Mr. Mulroney. As he did so, he told Mr. Mulroney that it contained a payment toward the retainer, and he again thanked Mr. Mulroney for his good work. Mr. Mulroney said that he did not hesitate to take the envelope and that he suspected the envelope did not contain a cheque. He stated that the envelope contained the third \$75,000 payment toward his retainer.

Mr. Mulroney testified that he did not discuss the payment with Mr. Doucet because it was a private matter between him and Mr. Schreiber. Mr. Doucet did not ask for, nor did Mr. Mulroney volunteer, any information about the payment.

According to Mr. Mulroney, after the meeting concluded, he, together with Mr. Schreiber and Mr. Doucet, went down to the restaurant for lunch with Mr. MacKay and his wife. Mr. Mulroney confirmed his understanding that Mr. Schreiber had asked him, through Mr. Doucet, to do Mr. Schreiber the favour of surprising Mr. MacKay and his wife at lunch because “it would be quite a plum for Schreiber if he could make that happen.”¹²¹

The lunch lasted approximately one or one-and-a-half hours, Mr. Mulroney said. At its conclusion, he and Mr. Doucet left together and agreed to meet later at the airport. Mr. Doucet departed for the airport, but, Mr. Mulroney testified, he went to a downtown branch of the Chemical Bank (on whose international advisory board he served as a director at the time). Mr. Mulroney had previously asked for a safety deposit box to be arranged for him there so he could store some sensitive papers. Mr. Mulroney explained that he did not have a bank account at the Chemical Bank, and it did not make sense for him to open a bank account there that afternoon as he had already arranged for the safety deposit box. Mr. Mulroney conceded that it would have been easy for him, as a member of the bank’s board of directors, to open an account. However, what he opted to do instead was to complete the paperwork for the opening of the safety deposit box and to put the envelope and its contents inside.

An interesting exchange took place between Mr. Mulroney and Mr. Wolson, commencing with Mr. Wolson's suggestion, "[Y]ou could have attempted to open an account." Mr. Mulroney responded with a question, "Why would I do that?"¹¹² Mr. Wolson answered, "[M]y response might be for transparency purposes. But that you didn't do." Mr. Mulroney then ended the exchange when he said, "I didn't do."¹¹³ Mr. Mulroney did not bring the money back to Canada. Instead, he kept it in the safety deposit box.

In my view, Mr. Mulroney's explanation for not opening an account at the Chemical Bank in New York and for not depositing the cash he had just received from Mr. Schreiber into that account is very difficult to accept. On the basis of the evidence before me, I conclude that a more reasonable explanation than the one given by Mr. Mulroney would be that opening an account and depositing the money into it would have created a record, thereby making the transaction transparent.

The treatment by Mr. Mulroney of this payment, as well as all the other evidence regarding Mr. Mulroney's failure to deposit or record the cash he received, leads me to conclude that Mr. Mulroney's objective was to conceal the fact that the payments had been made.

Mr. Mulroney's Account of Trips Before and After the Pierre Hotel Meeting

According to Mr. Mulroney, he made several trips abroad, both before and after the Pierre Hotel meeting, which related to his work on behalf of Mr. Schreiber. In the course of his travels, Mr. Mulroney said he met with world leaders, or former world leaders, with whom he broached the topic of his United Nations concept.

Earlier in this chapter I discussed Mr. Mulroney's two trips to China, in October 1993 and January 1994. I was unable to conclude that he discussed Thyssen with the Chinese authorities on either of these trips.

Mr. Mulroney testified that, in addition to the trips to China, he went to Russia in August 1994. President Yeltsin had personally invited him, and he met with him there. Mr. Mulroney stated that he went to France in September of that same year, and there he met with President Mitterrand. He met with President Mitterrand again in 1995 during a historic gathering of world leaders at Colorado Springs organized by former U.S. president George H.W. Bush to mark, and record for posterity, important events pertaining to the end of the Cold War. By that time, Mr. Mitterrand was no longer in office. Mr. Mulroney testified that, before the end of 1995, he spoke with two American contacts – James Baker, who had served in the cabinets of President George H.W. Bush and President Ronald Reagan, respectively, as secretary of state and as treasury secretary; and Caspar Weinberger, who had served as secretary of defense during both terms of the Reagan administration.

I pause here to note that Mr. Weinberger is deceased, and, although Mr. Mulroney recalled speaking to Mr. Baker, who is still alive, he was unable to remember any discussion with him about the procurement of military vehicles by the United Nations. According to Mr. Mulroney, he sought Mr. Baker's "wise counsel" as to "the general approach to the United Nations, to the Secretary-General, the weak spots, and so on."¹²⁴

I now deal, in greater detail, with the foreign travels and discussions that, according to Mr. Mulroney, occurred relative to his work on behalf of Mr. Schreiber.

Mr. Mulroney testified that he and his family were invited to visit Russia in August 1994 to spend some time with President Yeltsin. Given that Russia was a member of the P5, Mr. Mulroney said he took advantage of the opportunity at a meeting in Sochi to raise the issue of his UN concept and seek President Yeltsin's advice.

According to Mr. Mulroney, President Yeltsin initially misunderstood the nature of the discussion in that he believed Mr. Mulroney was hoping to persuade Russia to purchase Thyssen vehicles. Once he was disabused of that notion, he appeared to be supportive of Mr. Mulroney's concept. He remarked that the concept was a good one and continued: "Just because we can't afford any now, we certainly see how that would have advantages and could have benefits. Why don't you push it forward and if we can help you along the way, we will be happy to try."¹²⁵

Mr. Mulroney stated that he approached President Yeltsin rather than the public service because the Russian president has the ability to advance projects unilaterally without meeting with the public service, unlike other countries, such as Canada, which have a more "sophisticated democratic development."¹²⁶

When asked if Russia had ever been involved in peacekeeping, Mr. Mulroney responded that Russia was involved in "what they called peacekeeping throughout the Soviet Union at the time,"¹²⁷ but that it was not necessarily what he, Mr. Mulroney, would call peacekeeping.

Mr. Mulroney said he did not claim any expenses for the trip to Russia against his income despite the fact that he had compiled an inventory of expenses related to the services he performed there for Mr. Schreiber. He thought those expenses "were in the neighbourhood of" \$12,000.¹²⁸

While on the subject of expenses incurred in the course of Mr. Mulroney's travels, I note that Mr. Mulroney testified that he incurred some expenses relating to his meeting with President Mitterrand in France in September 1994, and expenses of approximately \$10,000 or \$12,000 on his trip to China – for a total of approximately \$45,000 or \$50,000 in expenses relative to work done on behalf of Mr. Schreiber. He also testified that he disposed of any records of the expenses in the ordinary course. He did not invoice Mr. Schreiber for the expenses. Recalling that Mr. Mulroney set up his company, Cansult, as a vehicle for his consulting work, I find that his failure to treat the alleged expenses in a businesslike manner, by recording the expenses on the

company's books and invoicing Mr. Schreiber for those expenses, detracts from the credibility of his evidence on this point.

I now turn to Mr. Mulroney's evidence respecting his trip to France and his meeting there with President Mitterrand. In late September 1994 Mr. Mulroney was scheduled to attend a board meeting in Brussels, Belgium. After the meeting, he travelled to Paris, where he was joined by Mrs. Mulroney. He says he was contacted at his hotel there by President Mitterrand, who invited him and Mrs. Mulroney to the Élysée Palace for an unscheduled "courtesy visit" that evening. Mr. Mulroney accepted the invitation.

During his meeting with President Mitterrand, Mr. Mulroney said, they discussed a range of subjects, including the "Thyssen opportunity." According to Mr. Mulroney, President Mitterrand remarked that he knew about Thyssen, that Thyssen had an excellent product, but that France wanted to get into that market itself. Mr. Mulroney told President Mitterrand that he was not trying to sell vehicles within the United Nations but was seeking President Mitterrand's opinions in terms of standardization and pre-positioning of vehicles in trouble spots. Mr. Mitterrand noted that he thought Mr. Mulroney's idea was an inspired one, and he left Mr. Mulroney with the impression that he would support his United Nations concept.

Mr. Mulroney said he discussed the subject again with Mr. Mitterrand at Colorado Springs in October 1995. Mr. Mitterrand asked him over breakfast one morning whether any progress had been made on his UN initiative. Mr. Mulroney responded that it was not moving ahead quickly but that progress had been made. Mr. Mitterrand then reiterated that the concept was a good one and that Mr. Mulroney should continue to pursue it.

With respect to his efforts on Mr. Schreiber's behalf in the United States, Mr. Mulroney testified that, during the same period in 1995, in addition to speaking to Mr. Weinberger, he had long conversations with Mr. Baker. He said that he spoke with Mr. Weinberger because of his vast experience in the military and because he hoped to gain an understanding of the technical side of peacekeeping needs.

According to Mr. Mulroney, Mr. Weinberger advised him that the American defence industry would oppose the concept fiercely and that the Americans would want to provide the equipment themselves. However, he agreed that the concept might have a chance because it was not "military in the conventional sense." Mr. Weinberger also said that Mr. Mulroney's other American contacts, including President Bush and President Clinton, might enable him to advance the concept successfully.

Mr. Mulroney testified that he sought Mr. Baker's counsel with respect to the general approach he should take to the United Nations and the secretary-general, as well as his thoughts on how the United States would react to the concept. Mr. Mulroney did not recall raising the issue of UN procurement of Thyssen products with Mr. Baker.

Before leaving the subject of Mr. Mulroney's meetings with various world leaders and other people of influence on Mr. Schreiber's behalf, I note that Mr. Pratte,

Mr. Mulroney's counsel, raised with him the fact that, with the exception of the Chinese leaders and Mr. Baker, all the individuals with whom he met are now deceased. The Chinese leaders are inaccessible, and he did not raise the subject of procurement with Mr. Baker.

I note that not one of the people to whom Mr. Mulroney says he spoke was available to corroborate or support what he had to say.

Although he sent courtesy letters on a regular basis, Mr. Mulroney did not know whether he had any correspondence, follow-up letters, or thank-you letters to any of the officials with whom he met about his concept. Mr. Mulroney said he provided all documents in his possession to the Commission. In response to questions asked of him by Mr. Auger, Mr. Mulroney indicated that such letters could exist, but he did not think that he would have included "much of that" [his concept] in a thank-you letter.¹²⁹

Mr. Mulroney did not meet with the secretary-general of the United Nations to advance his proposal because, before doing so, he wanted to meet with all members of the P5. Although Mr. Mulroney stated that he had met with representatives of China, Russia, and France, he did not have an opportunity to meet formally with either the Clinton administration in the United States or with the leaders of the United Kingdom to discuss his concept before his work was interrupted by the letter of request of September 1995 sent by Canada to Switzerland pertaining to the Airbus matter. After learning about the letter of request, Mr. Mulroney said he did no further work on his UN concept.

Referring to Mr. Schreiber's perspective that it was "nonsense" to suggest that Mr. Mulroney would consider selling or promoting Thyssen vehicles to Communist countries, Mr. Mulroney responded that he was not promoting or selling vehicles to Communist countries. Rather, he was ascertaining whether the leaders of the P5 countries were amenable to the idea of UN standardization and acquisition of a product.

As Mr. Mulroney explained, he was trying to advance a concept. He was not on a sales mission. However, he noted that, if a decision maker in the P5 countries had communicated an immediate need for vehicles, Mr. Mulroney would have contacted Mr. Doucet to speak with Mr. Schreiber. He perceived such an event to be part of his watching brief. Mr. Mulroney believed that his watching brief required him to act if it advanced Thyssen's interests.

Mr. Mulroney indicated that Germany could provide the vehicles for his UN concept, but he was unaware of specific interdictions relating to bilateral trade because it was not the object of his seeing "these leaders."¹³⁰

Mr. Mulroney testified that he did not send an invoice with details of his work because Mr. Schreiber did not ask for one. He explained that, at the time, he sent invoices on international consulting retainers where the arrangement was open ended, as it was here, only when the client requested one. Contrary to what occurred

in the case of Mr. Schreiber, where no invoice was ever sent, Mr. Mulroney said that he now sends an invoice to the client when the services for which he has been retained are complete.

Savoy Hotel Meeting, February 2, 1998

As noted in Chapter 5, Mr. Schreiber and Mr. Mulroney had another meeting, on February 2, 1998, at the Savoy Hotel in Zurich, Switzerland. Their accounts of the meeting differ in a number of significant respects. I will now discuss that meeting from the perspective first of Mr. Schreiber and then of Mr. Mulroney.

Mr. Schreiber's Account

Mr. Schreiber testified that, when he met with Mr. Mulroney at the Savoy Hotel in February 1998, he did not ask him about the work he had performed for him, nor did he request a statement. Mr. Schreiber said that Mr. Mulroney initiated the meeting at that time, and that was the only reason he met with him.

According to Mr. Schreiber, Mr. Mulroney was interested in ascertaining whether Mr. Schreiber was aware of any evidence that he (Mr. Schreiber) had paid money to Mr. Mulroney. Mr. Schreiber assured Mr. Mulroney that he had no evidence of the payment. He reinforced that statement when he commented, "[I]f Mr. Mulroney would have said 'What is Schreiber talking about, I never received any nickel from him,' I could not have proven it." Mr. Schreiber never asked Mr. Mulroney for a receipt for the monies, nor did he inquire what work Mr. Mulroney had done on his behalf.

Although Mr. Schreiber was not consistent on the point, he eventually testified that, although they never discussed spaghetti, he and Mr. Mulroney could have discussed Spaghetttissimo at the meeting. As I understand Mr. Schreiber's evidence, Spaghetttissimo is a piece of equipment used to produce a special type of pasta that Mr. Schreiber was promoting. This pasta, according to Mr. Schreiber, would assist in solving the problem of obesity, especially among children.

Mr. Schreiber testified that, at the time, Canadians and Americans were visiting Switzerland to "look at the thing" – presumably the Spaghetttissimo equipment. He said it was becoming more active in Canada.¹³¹ Mr. Schreiber testified that paragraph 28 of his affidavit of November 7, 2007, was accurate:

During the Savoy Meeting Mr. Mulroney and I also discussed how we could move forward with various business matters in the future which included Mr. Mulroney's support of the business activities of Spaghetttissimo North America Inc. ("Spaghetttissimo") and the potential for Archer Daniels Midland Company to get involved in this new business venture.¹³²

Mr. Schreiber testified that his discussions with Mr. Mulroney relating to pasta were part of his ongoing and evolving dialogue with Mr. Mulroney – a dialogue that he says began in the early 1980s.

Mr. Kaplan interviewed Mr. Schreiber on March 31, 2004. At that time Mr. Schreiber told him that Mr. Mulroney did help him with pasta in 1994.¹³³ I note that Mr. Schreiber testified that, although he may have discussed Spaghetissimo and pasta with Mr. Mulroney at the Savoy Hotel, the pasta machine was never part of Mr. Mulroney's mandate.

Mr. Mulroney's Account

According to Mr. Mulroney, he and Mr. Schreiber had numerous phone conversations between November 1995 and sometime in 1997. He said that these calls focused exclusively on the letter of request and the Airbus matter. They did not discuss their business relationship.

Mr. Mulroney said he initiated the Savoy meeting in 1998 because, for the first time in years, he was going to be in Switzerland, and he thought that he should invite Mr. Schreiber to lunch as a "simple courtesy."¹³⁴ He had not seen Mr. Schreiber in person since they met at the Pierre Hotel in 1994. He testified that he had no particular subject in mind to discuss when he initiated the Savoy meeting. He said simply that he and Mr. Schreiber had been objective allies in the "battle against the government," they had not seen each other since 1994, and he thought that, as a simple courtesy, he should invite Mr. Schreiber to lunch to say hello.

According to Mr. Mulroney, Mr. Schreiber's principal preoccupation at the meeting was a new idea, which they discussed at length. It involved "anti-obesity pasta machines and products," with which Mr. Schreiber was apparently becoming very involved. During their discussion about the pasta machines, they discussed "durum wheat" and Mr. Mulroney's directorship at Archer Daniels Midland, a likely supplier for the project. Durum wheat was a requirement for the anti-obesity pasta described by Mr. Schreiber. Mr. Mulroney stated that it was during this meeting in Zurich in 1998 that he first heard about Mr. Schreiber's pasta machines and products. Mr. Schreiber did not ask him to help with the venture at the time. Mr. Mulroney said he would have been "happy to do something"¹³⁵ for Mr. Schreiber had the request been made. He said firmly that neither Thyssen nor Bear Head was discussed at the Savoy Hotel meeting.

Mr. Mulroney testified that, in the year or two following the Savoy meeting, Mr. Schreiber continued to develop plans for his pasta business. These developments, however, were not "so much"¹³⁶ between him and Mr. Schreiber. He was simply aware that Mr. Schreiber was interested in the production of an anti-obesity pasta machine.

According to Mr. Mulroney, any services he provided in this area were not part of his retainer with Mr. Schreiber. These services included communications with Archer Daniels Midland. In addition, along with Mr. Alford, he visited a laboratory and/or a display area connected with the construction of these pasta machines in Toronto.

Mr. MacKay, Mr. Mulroney's good friend, had invested in a company in Seattle with which Mr. Schreiber was associated. This company was also involved in the production of the pasta-making machines.

Mr. Mulroney acknowledged that he attempted to arrange a meeting between fast-food giant McDonald's and either Mr. MacKay and/or Mr. Schreiber, or their representative, to propose a new venture to add pasta to McDonald's menu. Mr. Mulroney recalled that he might have contacted George Cohon, the president and chief executive officer of McDonald's Canada, but could not be certain who he communicated with. Mr. Mulroney explained that Mr. MacKay had spoken to him about this possibility. Mr. Mulroney believed that the McDonald's representative said he or she would be delighted to meet with them. Mr. Mulroney stated that he was unaware of what, if anything, occurred as a consequence of the arrangements he made.

Mr. Mulroney explicitly denied that he called the McDonald's representative on Mr. Schreiber's behalf. Any activities undertaken by Mr. Mulroney before the Savoy Hotel meeting insofar as pasta was concerned were initiated as a result of contacts that he had with Mr. MacKay, who had invested in the company manufacturing pasta-making machines in 1996 or 1997.

Mr. Schreiber's diary entries of February 4, February 5, and June 14, 1997,¹³⁷ are not, in my view, reliable evidence to support the assertion that Mr. Schreiber contacted Mr. Mulroney on any of those dates. Entries on the first two of these dates refer to "Tel. Brian" and "McDonalds," and an entry on the last date says "Brian Pasta Activities [sic]."

I acknowledge the accuracy of Mr. Kaplan's notes from his meeting and interview with Mr. Schreiber of March 31, 2004. I cannot, however, rely on Mr. Schreiber's statement to Mr. Kaplan that Mr. Mulroney helped him with his pasta business in 1994 as being true.

According to Mr. Mulroney, neither he nor Mr. Schreiber terminated the watching brief at the Savoy Hotel meeting. Mr. Mulroney noted that he was clearly trying "to function to help [Mr. Schreiber] with his new pasta products."¹³⁸ I note that this statement contradicts his evidence that Mr. Schreiber did not ask him to help with the pasta venture.

Further, Mr. Mulroney testified that he informed Mr. Kaplan that the payments from Mr. Schreiber were for Thyssen,¹³⁹ effectively denying the accuracy of the following excerpt from Mr. Kaplan's article in the *Globe and Mail* of November 10, 2003:

Eventually he [Mr. Mulroney] explained that Schreiber had paid him the money – though he disputes the amount – for his assistance in promoting a fresh-cooked pasta business Schreiber had started in Canada as well as his international interests.

Royal York Hotel Meeting, May 23, 2000

As noted in Chapter 5, the final meeting between Mr. Schreiber and Mr. Mulroney occurred during a dinner at the Royal York Hotel on May 23, 2000. Both Mr. Schreiber and Mr. Mulroney agreed that the meeting was a coincidence, but their accounts differ about what was said during their brief encounter that day.

Mr. Schreiber's Account

According to Mr. Schreiber, he and Mr. Mulroney spoke twice at the dinner (which was hosted by Peter Munk): first, when Mr. Mulroney arrived, and, second, as Mr. Mulroney was leaving the dinner. Mr. Schreiber stated that, during their conversation, he told Mr. Mulroney it was time for them to meet once more. Mr. Mulroney agreed to meet when he returned from Florida, where he was going the following day.

During this encounter at the Royal York Hotel, they did not discuss Bear Head or the payments in 1993 and 1994. Mr. Schreiber told Mr. Mulroney they should meet and, in Mr. Schreiber's words, "he said yes, you are right, we should meet when I am back from Florida where I'm going to be tomorrow."¹⁴⁰ In his November 7, 2007, affidavit, Mr. Schreiber stated that his purpose in requesting a private meeting with Mr. Mulroney was to discuss their business relations.¹⁴¹ However, there was no further meeting between Mr. Schreiber and Mr. Mulroney.

Mr. Mulroney's Account

Mr. Mulroney described the encounter as "a perfunctory hello and goodbye."¹⁴² In any case, he did not recall any discussion of a meeting with Mr. Schreiber after his trip to Florida. He said he did not travel to Florida after May 23, nor did he recall "having been in Florida in those circumstances."

In my view, Mr. Mulroney's version of what transpired at the Royal York Hotel on May 23, 2000, is the more credible description of what occurred. By that point, I believe, Mr. Mulroney was more interested in distancing himself from Mr. Schreiber than in maintaining a business relationship with him.

Correspondence After May 2000 and the Statement of Claim

Although Mr. Schreiber and Mr. Mulroney did not meet again after their chance encounter at the Royal York Hotel in May 2000, Mr. Schreiber continued to pursue his pasta business venture in Canada. He incorporated a company in Canada in 2001 and planned to open a pasta franchise store in Toronto the following year.

In the years following that last encounter, Mr. Schreiber wrote a series of letters to Mr. Mulroney. In July 2004 he requested Mr. Mulroney's support with the pasta venture. In July 2006 he apologized to Mr. Mulroney for making statements concerning their commercial relationship on the CBC's investigative series *the fifth estate* and wrote that he was the best advocate that he (Mr. Schreiber) could have retained. In February 2007 Mr. Schreiber demanded that Mr. Mulroney return the retainer payments he had given him plus the interest earned on them.¹⁴³

Mr. Schreiber subsequently caused a statement of claim to be issued against Mr. Mulroney on March 22, 2007.¹⁴⁴

Reto's Restaurant Systems International Inc.

In his affidavit of November 7, 2007, Mr. Schreiber stated that he and Mr. Mulroney had "considerable dealings" through intermediaries before and after their encounter at the Royal York Hotel.¹⁴⁵ The affidavit goes on to describe the incorporation of Reto's Restaurant Systems International Inc. (Reto's) on June 26, 2001.* Reto's continued the business activities of Spaghetissimo. Mr. Schreiber opened the first pasta franchise store under the trademark "Reto and the Machine Bistro Bar" in Toronto. He also approached Mr. Mulroney for assistance in obtaining private or government commitments with regard to the expansion of his pasta venture.

Mr. Schreiber did not specify in his testimony before me if or how this approach occurred. However, he said in the course of testifying that, during his meeting with Mr. Mulroney in 1998 at the Savoy Hotel, he may have mentioned pasta, though not in connection with the mandate he had given Mr. Mulroney.

Mr. Schreiber's Letter to Mr. Mulroney, July 2004

Mr. Schreiber confirmed that he wrote a letter to Mr. Mulroney in July 2004, prompted by a complimentary article he had read about him in the media.¹⁴⁶

Among other matters, the letter details the prevalence and effects of child obesity in the world and states that the "miracle solution" to the problem is "The Healthiest, Tasty Pasta On Earth." Mr. Schreiber went on to say that Reto's and the George Brown Chef School had started a pasta demonstration project in Toronto. The letter concluded with an expression of his hope to fight the "Obesity Epidemic" in the United States with the help of Bill Gates or the Bill and Melinda Gates Foundation as well as Mr. Mulroney.¹⁴⁷

Mr. Schreiber testified that his objective in writing this letter was to "activate" Mr. Mulroney, but Mr. Mulroney did not respond.

* I note that Reto's was actually incorporated on July 25, 2000: Exhibit P-7(2), tab 143. Spaghetissimo North America Inc. was incorporated on July 24, 1997: Exhibit P-7(2), tab 144.

Mr. Schreiber's Letter to Mr. Mulroney, July 20, 2006

Two years later, on July 20, 2006, Mr. Schreiber wrote a letter of apology to Mr. Mulroney,¹⁴⁸ based on a draft provided by Mr. MacKay,¹⁴⁹ for making statements concerning their commercial relationship during a program of *the fifth estate*.¹⁵⁰ Mr. Schreiber acknowledged that he informed the listening audience about his meetings with Mr. Mulroney and the payments he had made to him in cash in hotel rooms. During this program, Mr. Schreiber also stated that he learned, to his great surprise, that Mr. Mulroney had worked with him on his spaghetti venture.

Mr. Schreiber testified before me that Mr. MacKay informed him that Mr. Mulroney was ready to help him (Mr. Schreiber) with his affairs. When he received no reply, he wrote a second letter to Mr. Mulroney, indicating that he was still hoping to enlist his support for a commission of inquiry into the Airbus affair.¹⁵¹

At page 2 of the letter of July 20, 2006, Mr. Schreiber wrote:

I wish to tender my profuse apologies to you for the misleading, erroneous and unfair Characterization of your business relationship with me as depicted on the CBC program, "The Fifth Estate."

...

May I state for the record, that my testimony under oath in prior legal proceedings is the only correct description of our business arrangement. You, after returning to private life, at my request, agreed to advise and consult me in certain business affairs.

I still believe that my statements in the book "The Secret Trial," together with my testimony under oath at the Eurocopter trial and my statements to Bob Fife, have made it crystal clear what my position is.

...

The discussion and financial arrangements between you and me about future industrial projects have been correct, private and nobody's business. You were the best advocate I could have retained.¹⁵²

Mr. Schreiber stated that Mr. Mulroney had requested the July 20, 2006, letter so he could show it to Prime Minister Harper and demonstrate that Mr. Mulroney and Mr. Schreiber were on good terms and that Mr. Schreiber was not an enemy of the Conservative Party. According to Mr. Schreiber's affidavit of November 7, 2007, Mr. Mulroney was going to meet with Prime Minister Harper at Harrington Lake at the end of July. In testimony, however, Mr. Schreiber acknowledged that he was informed of the need for the letter through Mr. MacKay, and not by Mr. Mulroney directly.

Referring to Mr. Mulroney's request for a letter, Mr. Schreiber explained that, in his world, "the politicians come to you with the strangest requests."¹⁵³ According to Mr. Schreiber, if Mr. Mulroney had wanted something that "was reasonable," he would have said a lot of things "for courtesy reasons" in order to work with Mr. Mulroney to launch an inquiry.

In his evidence before me, Mr. Schreiber confirmed the statements he had made in his interview with Commission counsel about his July 20, 2006, letter to Mr. Mulroney: that only three statements in that letter were not true. The three untruthful statements were that he had received a satisfactory explanation about their misunderstanding on the Bear Head Project; that Mr. Mulroney was the “best advocate he could have ever retained”; and that he wished to apologize to Mr. Mulroney. He stated that the rest of the letter was truthful and accurate. Mr. Schreiber acknowledged signing the July 20, 2006, letter knowing that it was only partly true.

Mr. Schreiber stated that he subsequently learned from Mr. MacKay that the message in the letter was well received by Mr. Mulroney, but that nothing could be done until the Supreme Court of Canada ruled on his extradition matter. At that point it would be in the hands of the minister of justice, not the courts.

In testifying before me, Mr. Mulroney said he was not involved directly or indirectly in procuring or initiating the writing of this letter from Mr. Schreiber.

Mr. MacKay also testified that Mr. Mulroney did not request him to write any letter. He stated that he provided Mr. Schreiber in an email with a draft of the letter simply because Mr. Schreiber asked him what he might write to Mr. Mulroney to try to repair their relationship. Mr. MacKay understood that Mr. Mulroney felt he could not help Mr. Schreiber because of the statements Mr. Schreiber had made on *the fifth estate* program. Foolishly, Mr. MacKay explained, he thought that an apology might clear the air and result in Mr. Mulroney’s being able to assist Mr. Schreiber if he wished to do so.

Mr. MacKay acknowledged that the facts he set out in an email to Mr. Schreiber, in which he suggested the contents of a letter to Mr. Mulroney, came from Mr. Schreiber. In particular, Mr. MacKay confirmed that what he wrote in the email concerning *the fifth estate* resulted from his understanding that Mr. Schreiber viewed the characterization of the Schreiber / Mulroney relationship on the part of *the fifth estate* to be misleading and unfair. Mr. Schreiber told Mr. MacKay that he felt he had been duped by the producers of the program. With reference to the phrase “May I state for the record, that my testimony under oath in prior legal proceedings is the only correct description of our business arrangement,” Mr. MacKay confirmed that Mr. Schreiber had made this statement in reference to the testimony he had given in late 2004 in a legal procedure involving Messerschmitt-Bolkow-Blohm GmbH (MBB) helicopters (and referred to later in this chapter as the Eurocopter proceedings).¹⁵⁴

Referring to the sentence in the draft letter that “you were the best advocate I could have retained,”¹⁵⁵ Mr. MacKay acknowledged these were his words. He remarked that he felt it was appropriate to include this sentiment because Mr. Schreiber had said very kind things about Mr. Mulroney in the past.

I have formed the view that Mr. Schreiber’s evidence regarding what precipitated the writing of the letter of July 20, 2006, is less than credible. In my opinion, neither

Mr. Mulroney nor Mr. MacKay instigated the writing of the letter. I reject Mr. Schreiber's assertion that Mr. Mulroney wanted the letter so he could show it to Mr. Harper. I do not believe that Mr. Mulroney had any intention of implicating Mr. Harper in Mr. Schreiber's legal problem – namely, potential extradition to Germany.

Mr. Schreiber's Letter to Mr. Mulroney, February 20, 2007

On February 20, 2007, Mr. Schreiber wrote a letter to Mr. Mulroney demanding payment of \$485,000, being the return of the payments totalling \$300,000 plus 5 percent interest from "January 1, 1995, to February 28, 2005."¹⁵⁶ According to Mr. Schreiber, Mr. Mulroney had refused to meet with two friends, Mr. MacKay and Michael Cochrane, to discuss the pasta business and the pasta obesity-fighting program for children. Mr. Schreiber said in his testimony, "[N]ow that he refuses to help, I want my money back."¹⁵⁷

Mr. Schreiber's letter of February 20, 2007, states:

Unfortunately, nothing came of our plans as discussed during our meetings in 1993 and 1994. Meanwhile events have unfolded that brought us considerable public embarrassment, media attention and court battles, some settled, others still pending.

...

The fact is you did nothing. You even ignored my letters and refused to meet with Elmer and Mike to discuss the Pasta obesity fighting program for children.

There is no foreseeable business that would warrant a payment of \$300,000.

Therefore, I demand the return of the funds in the amount of \$485,000 ... no later than March 5, 2007, after which I will commence a civil lawsuit against you immediately.¹⁵⁸

Mr. Mulroney believed that Mr. Schreiber's letter of February 20, 2007, was the first demand he received for the return of the \$300,000 that Mr. Schreiber alleged he had paid to him. He agreed that he did not reply by letter or call Mr. Schreiber to say he had worked for the money and travelled abroad. According to Mr. Mulroney, he did not respond because the context of the letter demonstrated to him that Mr. Schreiber's efforts were wholly concentrated on avoiding extradition.

Mr. Mulroney alluded to previous letters sent to him by Mr. Schreiber, all of which were complimentary, lauding him for his achievements. However, as Mr. Mulroney put it, "And then in 2007, as the noose begins to tighten around his neck in respect of extradition, the mood changes and the letters change, as you can see."¹⁵⁹ He noted that Mr. Schreiber had written him a letter indicating that he was honoured to have had Mr. Mulroney as an advocate.¹⁶⁰ In addition, Mr. Mulroney contended that Mr. Schreiber "set out in great detail what he considered the tremendous work that I had done for him" in his letter dated July 20, 2006.¹⁶¹

In addition, Mr. Mulroney said it was not appropriate to respond to Mr. Schreiber's letter of February 20, 2007, because, for the first time in the 13 or 15 years "after I had

begun the services, provided him with the services,”¹⁶² this kind of action was initiated by Mr. Schreiber.

Mr. Schreiber’s Statement of Claim Against Mr. Mulroney, March 22, 2007¹⁶³

As discussed in Chapter 5, Mr. Schreiber eventually instructed his counsel to commence an action against Mr. Mulroney in Ontario for two reasons: he had provided no services for the retainer he had been paid; and he had not returned the \$300,000.

Mr. Doucet’s Notes and the Mandate Document

During the course of Mr. Doucet’s evidence, I heard that he had made notes of various conversations he had had with Mr. Schreiber. Mr. Doucet also told me that he prepared what has been referred to as “the mandate document.” He did so long after Mr. Schreiber and Mr. Mulroney reached an agreement regarding the nature and scope of the services Mr. Mulroney would provide to Mr. Schreiber.

Mr. Doucet agreed that he became concerned about Mr. Schreiber’s bona fides subsequent to his (Mr. Schreiber’s) arrest and after he became friendlier with the media in 1999. As a consequence of *the fifth estate* broadcast on October 20, 1999, Mr. Doucet began making notes on his conversations with Mr. Schreiber.

The evidence discloses that Mr. Schreiber and Mr. Doucet met and had discussions on December 26, 1999, January 11, 2000, and February 4, 2000. Mr. Doucet made notes of the first two meetings, and he recorded a summary of his recollections of events that were of potential importance to Mr. Mulroney.

MR. DOUCET’S NOTES OF THE MEETING, OCTOBER 28, 1999

On October 20, 1999, the CBC aired a program of *the fifth estate* entitled “The Mysterious Dealmaker.”¹⁶⁴ Mr. Doucet stated that, after viewing this program, he became troubled by it. Based on this concern, he made the notes dated October 28, 1999, of the meeting of December 8, 1994, at the Pierre Hotel.¹⁶⁵

Mr. Doucet’s notes summarize how he travelled to New York in 1994 to meet Mr. Mulroney so they could attend the celebratory luncheon. The notes state that, before the lunch, Mr. Schreiber “wanted [Mr. Mulroney] to provide a report to him on his ongoing assignment of oversight internationally.” The notes subsequently detail a one-and-a-half-hour discussion of “various aspects about [Mr. Mulroney’s] assignment as well as a number of matters where [Mr. Mulroney] saw opportunities in the international arena.” The notes indicate that the meeting concluded with a payment by Mr. Schreiber to Mr. Mulroney for “services and expenses.”¹⁶⁶

It is, I think, astonishing that Mr. Doucet, who could not remember receiving a cheque for \$90,000 from Mr. Schreiber or one of his companies in November 1988, would be able to remember and recount in detail what transpired over the course of a

meeting of one-and-a-half-hours' duration between Mr. Schreiber and Mr. Mulroney at the Pierre Hotel in New York some six years after the meeting. It strains my credibility to accept that Mr. Doucet prepared those notes based on his memory alone, and I do not believe he did so. The notes represent another attempt by Mr. Doucet to demonstrate his unwavering support for and loyalty to Mr. Mulroney.

Mr. Doucet's Account

Mr. Doucet confirmed that his notes of October 28, 1999, covered the discussions Mr. Mulroney and Mr. Schreiber had regarding "various aspects about MBM's [Mr. Mulroney's] assignment as well as a number of matters where MBM saw opportunities in the international arena."¹⁶⁷ When questioned by Mr. Auger, Mr. Doucet refused to accept that this description suggested there were two separate components to the discussion between Mr. Mulroney and Mr. Schreiber – the assignment; and the international component.

In addition, Mr. Doucet testified that the payment Mr. Schreiber made to Mr. Mulroney at the Pierre Hotel meeting was for services and expenses, as indicated in his notes.

Mr. Doucet also testified that he used the word "international" twice in his notes, but not the word "Thyssen." He explained that he felt it was implicit that Thyssen was the subject of the consultancy agreement.

Mr. Schreiber's Account

In his testimony, Mr. Schreiber said it was not true that, during the meeting at the Pierre Hotel in New York, he wanted Mr. Mulroney "to provide a report to him on his ongoing assignment of oversight internationally on behalf of [his] corporate interests."¹⁶⁸ He also denied that they discussed at that meeting Mr. Mulroney's assignment "as well as a number of matters where [Mr. Mulroney] saw opportunities in the international arena."¹⁶⁹

Further, Mr. Schreiber described as "nonsense" the assertion that he was given a full account at that meeting of Mr. Mulroney's activities on his behalf. He indicated that there was no business with China and Russia on NATO equipment. Mr. Schreiber suggested that Mr. Mulroney may have mentioned discussions with people in "the province" [Quebec], but any advancement of the Bear Head Project hinged on federal government agreement.¹⁷⁰

Mr. Schreiber conceded that he paid Mr. Mulroney despite the fact that Mr. Mulroney had done nothing for him.

MR. DOUCET'S NOTES OF THE MEETING, DECEMBER 26, 1999

Some two months after Mr. Doucet says he wrote the notes of October 28, 1999, he invited Mr. Schreiber and his wife to visit him and his wife at their home on December 26, 1999. During the visit, Mr. Schreiber and Mr. Doucet had a private meeting in which they discussed a variety of matters.

Mr. Doucet's notes of the meeting indicate that Mr. Schreiber said: "Brian is a great guy. I wish we could have done that Thyssen project – he would now have a great client on the international scale."¹⁷¹

Mr. Doucet's Account

Mr. Doucet said he made handwritten notes 10 minutes after Mr. and Mrs. Schreiber left and his wife typed them up on the computer sometime later. Although these notes are in summary rather than interactive form, he said he attempted to record his recollection of what Mr. Schreiber said as accurately as he could. Mr. Doucet explained that he had considerable experience in making notes while he worked in government, where he would take notes during meetings and, if he was chairing a meeting, for instance, complete them later. He acknowledged that inadvertently changing a word or two in a sentence can destroy the meaning of a sentence. He agreed that this slip could have happened in his account of the December 26, 1999, meeting.

While testifying before me, Mr. Doucet testified that Mr. Schreiber said he wished that he and Mr. Mulroney could have "done" the Thyssen project because Mr. Mulroney "would now have a great client on the international scale."¹⁷² I note that there was nothing in either Mr. Doucet's notes or his evidence about the nature of Mr. Mulroney's mandate from Mr. Schreiber. The comment attributed to Mr. Schreiber in the lines just above supports Mr. Mulroney's position that the mandate was international. I disbelieve Mr. Schreiber's contention that he did not make the foregoing comment.

According to Mr. Doucet, he thought that another meeting with Mr. Schreiber after December 26, 1999, was required. He sensed that trouble was brewing and believed that the arrangement between Mr. Mulroney and Mr. Schreiber should be memorialized. Mr. Doucet also wanted to clear up what he referred to as "the Luc Lavoie issue," meaning the derogatory comments Mr. Lavoie had made about Mr. Schreiber on the October 1999 broadcast of *the fifth estate*. Mr. Doucet did not believe that he spoke with Mr. Schreiber about putting the mandate in writing at the meeting on December 26, 1999.

Mr. Schreiber's Account

In his testimony, Mr. Schreiber denied making the comment Mr. Doucet attributed to him at the meeting – that he wished he and Mr. Mulroney could have "done"

the Thyssen project because Mr. Mulroney “would now have a great client on the international scale.”¹⁷³

MR. DOUCET’S NOTES OF THE MEETING, JANUARY 11, 2000

Just over two weeks after their meeting on December 26, 1999, Mr. Schreiber and Mr. Doucet had another meeting. They met on January 11, 2000, at the Royal York Hotel in Toronto, and Mr. Doucet immediately after made notes of what transpired at that meeting.

The notes reflect a discussion Mr. Doucet initiated. He asked Mr. Schreiber what he proposed to say at his examination for discovery (a lawsuit he had commenced against the Government of Canada in relation to the letter of request) regarding Mr. Mulroney’s “consultancy internationally.”¹⁷⁴ Mr. Doucet allegedly asked Mr. Schreiber whether, on being examined for discovery, he would say that the arrangement he had with Mr. Mulroney was for an international consultancy. Mr. Doucet then suggested that, at the Pierre Hotel meeting, Mr. Schreiber proposed that Mr. Mulroney keep a three-year worldwide watching brief and report to Mr. Schreiber on possible opportunities for his companies. In return, he (Mr. Schreiber) would pay Mr. Mulroney a fee and expenses. According to the notes, Mr. Schreiber told Mr. Doucet that he and Mr. Mulroney had discussed the mandate in the context of peacekeeping programs. Mr. Schreiber told Mr. Doucet that he would give this account about the post-1993 period if he were asked on the examination for discovery.

The notes go on to record that, when Mr. Doucet asked Mr. Schreiber about the financial arrangements, Mr. Schreiber was unable to recall if those arrangements pertained to an advance or a loan. Mr. Schreiber and Mr. Doucet apparently concluded the discussion by agreeing that there is “nothing like the truth.”¹⁷⁵

Mr. Doucet’s Account

According to Mr. Doucet, he had a room at the Royal York Hotel on January 11, 2000. He told Mr. Schreiber that he wanted to raise some issues of importance with him, particularly the derogatory comments Mr. Lavoie had made about Mr. Schreiber – a matter of some concern to Mr. Mulroney.

Mr. Doucet testified that, minutes after the meeting concluded, he wrote the six numbered paragraphs, using the interactive approach, with the intention of being as accurate as possible. Mr. Doucet could not recall why he did not simply make notes during the conversation, and he acknowledged that that would have been a more accurate way of recording the conversation.

Mr. Doucet's notes regarding the mandate and Mr. Schreiber's discoveries conclude as follows:

Look Fred Brian is my friend. I will do nothing that will hurt him – you tell him. We can come back to this matter later but we agree on the mandate I gave him and he accepted. O.K. Fred, there is nothing like the truth do you agree? Absolutely.”

When questioned about the suggestion that the mandate discussed was not the truth, Mr. Doucet suggested that the statement “nothing like the truth” could have been a generic comment that was not necessarily tied to the paragraph's subject.

Mr. Schreiber's Account

Mr. Schreiber confirmed that he met Mr. Doucet at the Royal York Hotel, though he could not remember the date and had little recollection of the meeting. The purpose of the meeting, Mr. Schreiber stated, was to continue their discussions from December 26, 1999.

Mr. Schreiber denied that Mr. Doucet asked him about the “consultancy internationally” and what he had in mind when he called him (Mr. Doucet) to set up the Mirabel meeting. He stated that he did not speak with Mr. Doucet about what he had intended to discuss with Mr. Mulroney at Mirabel on August 27, 1993.

In addition, Mr. Schreiber denied ever discussing with Mr. Doucet a mandate regarding Mr. Mulroney. He testified that Mr. Doucet may have asked him what he would say under oath about his “post-1993” relationship with Mr. Mulroney, but said he did not discuss financial arrangements or matters of that nature with Mr. Doucet.

Mr. Schreiber also denied telling Mr. Doucet that the payments to Mr. Mulroney could have been a loan or an advance. He reiterated that he paid Mr. Mulroney for future services. Mr. Schreiber recalled, however, that he may have indicated to Mr. Doucet that he would have been unable to prove otherwise if Mr. Mulroney suggested that the payment was a loan, an advance, a gift, or was never made.

Mr. Schreiber repeated that nothing regarding the mandate was ever discussed with Mr. Doucet because it was not his habit to discuss business matters with other people.

In my view, Mr. Doucet's notes of the meeting he had at the Royal York Hotel on January 11, 2006, are more credible than Mr. Schreiber's evidence in terms of what was said and what transpired during the course of that meeting. Mr. Schreiber, in one breath, says he has little recollection of what occurred during the meeting, but in the next breath is quick to deny things that he reputedly said. The notes were made within minutes of the conclusion of what must have been a relatively brief meeting when the events would have been fresh in Mr. Doucet's mind. The other possibility is that Mr. Doucet concocted the notes, although there is nothing in the evidence before me to suggest that he did so. Nonetheless, given that Mr. Doucet said he saw trouble brewing, the notes should be treated with caution as possibly self-serving or designed to serve the interests of Mr. Doucet's friend, Mr. Mulroney.

MEETING OF FEBRUARY 4, 2000, AND THE MANDATE DOCUMENT

The series of meetings between Mr. Doucet and Mr. Schreiber continued with a third meeting on February 4, 2000, either at Mr. Doucet's office or in a boardroom adjacent to his office in Ottawa. Mr. Schreiber concedes that Mr. Doucet brought a document entitled "Mandate" to the meeting, but both men disagree about the discussions that day and the events that followed concerning the document and the handwritten markups on the document itself.

Mr. Doucet's Account

Memorializing the Agreement

Despite the passage of time, Mr. Doucet felt it advisable that Mr. Schreiber and Mr. Mulroney have a written mandate recording their agreement. Mr. Schreiber had been one of his valued clients, and Mr. Mulroney was a lifelong friend. Mr. Doucet sensed that the media was in the process of conducting a fishing expedition. In *the fifth estate* program broadcast in October 1999, for example, Mr. Doucet testified that, in his view, significant ambiguity and innuendo had been expressed about both the relationship between Mr. Mulroney and Mr. Schreiber and their agreement.¹⁷⁷

When Mr. Doucet learned from Mr. Mulroney that he had no written mandate, he advised Mr. Mulroney that there ought to be one, which could be stored away for future use if necessary. According to Mr. Doucet, Mr. Mulroney thought this plan was a good idea.

Initially, while testifying, Mr. Doucet told me that he never advised Mr. Schreiber during the meeting on January 11, 2000, at the Royal York Hotel that he wanted to memorialize the relationship between him and Mr. Mulroney. However, on being questioned by Mr. Wolson, Mr. Doucet recalled that, when he gave a recorded interview to Commission counsel before the Inquiry, he told them that he had raised the issue of the mandate at one or two meetings before the meeting of February 4, 2000. In that same interview, Mr. Doucet also stated that Mr. Schreiber thought memorializing the agreement was a good idea.¹⁷⁸

The Mandate Document

Sometime between the January 11 and the February 4, 2000, meetings, Mr. Doucet drafted the mandate document and read it to Mr. Mulroney. Mr. Doucet indicated that he wrote what he thought was the mandate based on his discussions with Mr. Schreiber before the Mirabel meeting, his other discussions with Mr. Schreiber, his discussions with Mr. Mulroney, and the meeting at the Pierre Hotel.

The mandate document reads as follows:

To provide a watching brief to develop economic opportunities for our companies, including travelling abroad to meet with government and private sector leaders to assist in opening new markets for our products and to report regularly to us in this regard. In this context, priority should be given to opportunities relating to Canadian based manufacturing of peace keeping and/or peace making military equipment in view of Canada's prominence in this area. The mandate will be for a period of three years. The fee to cover services and expenses is set at _____ for the period.¹⁷⁹

Although Mr. Doucet says he read the document with certain items left blank to Mr. Mulroney before the meeting, he said he never asked Mr. Mulroney about the amount of the fee, nor did Mr. Mulroney provide him with the amount. Rather, said Mr. Doucet, Mr. Schreiber provided him with the amount of the fee, \$250,000, to be inserted into the mandate document.

With reference to the first sentence of the document, Mr. Doucet stated that "our companies" refers to Mr. Schreiber's companies, and not to any companies belonging to Mr. Mulroney.

Mr. Doucet indicated that the information regarding travelling abroad to "assist in opening new markets" came from his reflections on the mandate based on his discussions with Mr. Mulroney and Mr. Schreiber and his attending the meeting at the Pierre Hotel. Mr. Doucet acknowledged that the wording of the mandate could be read as not limiting the assignment to travel abroad, though Mr. Doucet disagreed with this conclusion.

With reference to the excerpt regarding priority being given to Canadian-based manufacturing of peacekeeping equipment in view of Canada's prominence in the area, Mr. Doucet stated that the prominence related to peacekeeping. Mr. Doucet agreed with Mr. Auger's suggestion that, before there could be any international sales, a plant had first to be built in Canada.

I have difficulty believing that Mr. Doucet, who prepared the mandate because of his concern that there was no written agreement between Mr. Schreiber and Mr. Mulroney, would not have asked Mr. Mulroney for the amount to be inserted into the mandate as the fee. Mr. Doucet was apparently astute enough, even though he is not legally trained, to include in the mandate the important terms, including the length of the term of the mandate and the services to be provided by Mr. Mulroney. Surely the amount of the fee, being an important aspect of the mandate, is a subject that would have been canvassed by Mr. Doucet when he spoke to Mr. Mulroney.

The Meeting

Mr. Doucet stated that the meeting of February 4, 2000, was his idea. He agreed with Mr. Auger's suggestion that his objective at the meeting was to generate handwriting on the paper that would accurately record the mandate.

Mr. Doucet recalled that he and Mr. Schreiber were alone in a boardroom adjacent to his office with two blank mandate sheets, one for himself and one for Mr. Schreiber. He stated that one of the blank mandates was to enable Mr. Schreiber to follow along.

In his recorded interview with Commission counsel, Mr. Doucet said that, at the commencement of the meeting, he asked Mr. Schreiber if the mandate was accurate and that Mr. Schreiber confirmed it was. Mr. Doucet subsequently asked Mr. Schreiber the names of the mandating companies and requested that he write them out on the document, which he did.¹⁸⁰

Mr. Doucet confirmed that the handwriting on the document was his and Mr. Schreiber's and that the document bearing the handwriting was the only copy on which they were working. Mr. Doucet did not recall Mr. Schreiber writing on the copy that was provided to him.

The mandate document has handwritten markups as shown on this reproduction:

93/94
94/95
95/96

MANDATE

To provide a watching brief to develop economic opportunities for our companies.

A B C

including travelling abroad to meet with government and private sector leaders to assist in opening new markets for our products and to report regularly to us in this regard. In this context, priority should be given to opportunities relating to Canadian based manufacturing of peace keeping and/ or peace making military equipment in view of Canada's prominence in this area.

The mandate will be for a period of three years. The fee to cover services and expenses is set at ~~250,000~~ 250,000 for the period

* Bayerische or whatever other company's name
Bayerische Bitumen Chemie
Hautering

* Bituman Calgary

F.D.C.I.
BM

① The mandate is inaccurate

② The two companies were Bayerische and Bituman Calgary and any other company that may be appropriate

③ The amount paid over the 3 years was \$250,000.

According to Mr. Doucet, his handwriting on the mandate document¹⁸¹ consisted of “Feb. 4/00”; “93/94, 94/95, 95/96,” which refer to the years of the mandate; “A, B, C,” which Mr. Doucet thought he wrote in explaining the mandate to Mr. Schreiber without knowing how many companies would be listed; “Bayerische or whatever other companies I name,” which is a quote from Mr. Schreiber; the “*” (asterisk) beside Bayerische and Bitucan, which were written because Mr. Schreiber told Mr. Doucet that the mandating companies were Bayerische and Bitucan Calgary and any other company that may be appropriate; “B.M.” and “F.D.C.I.,” which mean Brian Mulroney and Fred Doucet Consulting Inc., respectively, and which were not intended to be initials; “Th,” which could mean Thyssen or the beginning of “The” (the first word on the next line); “X,” which Mr. Doucet wrote when he sensed that the number Mr. Schreiber communicated to him would not fit in the line; “\$250,000,” which was the fee for the three-year period; and the three points – “1) The Mandate is accurate; 2) The two companies were Bayerische and Bitucan Calgary and any other companies that may be appropriate; and 3) The amount paid over the 3 years was \$250,000.” The latter-numbered three points are a summary of what transpired at the meeting.¹⁸²

Mr. Doucet testified that the following items on the mandate document are in Mr. Schreiber’s handwriting: “Bayerische Bitumen Chemie”; the slightly larger “Chemie,” written because Mr. Doucet could not read the word Chemie the first time Mr. Schreiber wrote it; “Kaufering,” the city in Germany from which Mr. Schreiber comes (Mr. Doucet was unaware of this fact at the time and has never been there); and “Bitucan Calgary.”

In response to a suggestion made by Mr. Wolson, Mr. Doucet confirmed, during his testimony before me, that there was no other writing on the document besides his and Mr. Schreiber’s and that the mandate document with the handwriting on it was made in his and Mr. Schreiber’s presence in the boardroom. More specifically, Mr. Doucet denied Mr. Schreiber’s assertion that the markings on the document were not there when he left Mr. Doucet’s office. Mr. Doucet noted that, in retrospect, he should have made a copy for Mr. Schreiber, but he presumed that Mr. Schreiber was aware of the information written on the document because he had been relying on Mr. Schreiber to fill in the blanks in the document during the meeting.

Mr. Doucet said that Mr. Schreiber might have had a blank document with him when he left at the conclusion of the meeting.

Mr. Doucet acknowledged that the mandate does not refer explicitly to Bear Head or Thyssen but stated that it was implicit throughout the relationship “for me, at least, there was nothing but Bear Head / Thyssen.”¹⁸³ In this regard, Mr. Doucet cited the excerpt in the mandate regarding “Canadian based manufacturing.”

According to Mr. Doucet, it was not his intention to get signatures on the mandate document, nor did he leave blanks for this purpose. The document was intended to memorialize an event, not to be a legal document.

In the days that followed the meeting, Mr. Doucet reported to Mr. Mulroney on what Mr. Schreiber had told him about the mandate, including the terms and the amount of the fee. Mr. Doucet agreed that he spoke to Mr. Mulroney to satisfy him that he (Mr. Doucet) had been able to memorialize the mandate. He did not ask Mr. Mulroney whether it was accurate. Mr. Mulroney made no changes or suggestions but simply said, "That's fine. That's okay."¹⁸⁴ Mr. Doucet indicated that Mr. Mulroney did not approve of the amount aside from his general comment about the document as a whole. In fact, Mr. Mulroney never mentioned anything to Mr. Doucet about the \$250,000 written on the mandate document.

Mr. Schreiber's Account

The Meeting

According to Mr. Schreiber, Mr. Doucet phoned him to request the meeting in February 2000. He recalled attending Mr. Doucet's office on February 4, 2000, and looking at photographs of Mr. Mulroney and Mr. Doucet for a period of 15 minutes before the meeting began. He did not remember that the meeting took place in the boardroom.

Mr. Schreiber testified that Mr. Doucet presented him with the blank version of the mandate document during the meeting. He said that the part of the mandate description regarding priority being given to Canadian-based manufacturing of peacekeeping or peace-making equipment in view of Canada's prominence in the area was accurate. However, Mr. Schreiber maintained that he never discussed the following section with Mr. Doucet: "... a watching brief to develop economic opportunities ... including travelling abroad to meet with government and private sector leaders."¹⁸⁵ He stated it was not his habit to discuss an agreement with "the doorman" (Mr. Doucet) when he could discuss it with "the boss."¹⁸⁶ In Mr. Schreiber's interview with Commission counsel of March 24, 2009, he stated that he did not seriously consider the document because, first, he was not interested in what he arranged or may have arranged previously; and, second, the mandate did not pertain to a relationship with Mr. Doucet.

According to Mr. Schreiber, before leaving the meeting, he took the mandate document, informed Mr. Doucet that he would consider it, but that he would not discuss the document with him. Mr. Schreiber found the mandate document to be an "insult," but he did not voice his indignation to Mr. Doucet. Mr. Schreiber subsequently gave the document to his counsel at that time, Edward Greenspan.

Mr. Schreiber did not recall Mr. Doucet writing anything on the document in his presence, nor did he remember answering Mr. Doucet's questions. He had no recollection of writing anything whatsoever on the mandate document or signing or agreeing to any mandate sheet in relation to his dealings with Mr. Mulroney.

Mr. Schreiber acknowledged that he recognized some of the handwriting on the mandate document as his, but indicated that he had no idea how it got there. He attributed the fact that his handwriting appeared on the document when he had written nothing to “a miracle.”¹⁸⁷

Mr. Schreiber stated that only he and Mr. Doucet were at the meeting and that it ended after 30 to 45 minutes.

The Mandate Document

Mr. Schreiber testified that the first time he saw the mandate document with handwritten markups was at the hearings of the Ethics Committee. With particular reference to the handwritten “\$250,000” on the document, Mr. Schreiber confirmed that he disagreed with the amount. He said he did not provide it to Mr. Doucet at the meeting. Mr. Schreiber denied Mr. Houston’s suggestion that he told Mr. Doucet the amount was \$250,000 because, by that time, he could not remember what he had given to Mr. Mulroney. He also denied taking any of the \$300,000 for himself. In addition, Mr. Schreiber did not recall Mr. Doucet’s reviewing the three points on the bottom right-hand corner and writing them in his presence.

According to Mr. Schreiber, his handwriting on the mandate document consists of the listing of the company “Bayerische Bitumen Chemie” – a road construction and traffic safety company that had nothing to do with peacekeeping equipment; “Chemie,” where it again appears alone; “Kaufering,” the city in Germany he is from and the city in which the company is located; and “Bitucan Calgary,” the company that issued cheques to Messrs. Gerald Doucet, Fred Doucet, Frank Moores, and Gary Ouellet and to GCI in 1988.

Mr. Schreiber agreed that Bitucan had a connection with the Bear Head Project, but that Bayerische Bitumen did not. Mr. Schreiber stated later that he did not understand why the companies were listed, as they did not have any connection to peacekeeping equipment.

As I have already noted, Mr. Schreiber did not know how his handwriting arrived on the mandate document and suggested that it was a “miracle.”¹⁸⁸ He stated later in response to a suggestion by his counsel, Mr. Auger, that he was not serious with this terminology and that he could only assume that he wrote “this down somewhere” at some stage but did not know for what purpose or reason.

Expert Analysis by Canada Border Services Agency of the Mandate Document

The Commission requested an expert to analyze the handwriting on the mandate document. That expert was employed at the Forensic Document Examination Section at Canada Border Services Agency (CBSA). The expert’s report was admitted into evidence with the consent of all parties, so the expert was not called to testify.

Referring to the mandate document, CBSA's report concluded the following: the notations on the document were "produced naturally and free from conscious execution"; there is no evidence of the writing being traced or otherwise drawn on the document; and there is no evidence of insertions to the document text.¹⁸⁹

After being presented with the expert's report, Mr. Schreiber testified that he had no recollection of inserting the handwritten markups on the document. He continued to assert that the markups were not put on the mandate document by him and that the first time he saw the marked-up document was when he testified before the Ethics Committee.

On the basis of the evidence I received, particularly the expert evidence, on the issue of who wrote what portion or portions of the mandate document, I have no doubt whatsoever that Mr. Schreiber wrote those portions of the mandate document attributed to him.

Mr. Mulroney's Account of the Mandate Document

Memorializing the Agreement

Mr. Mulroney agreed that Mr. Doucet probably asked him in advance of the February 4, 2000, meeting whether there was a mandate document and he responded that there was none. Mr. Doucet then advised Mr. Mulroney that such a document should be made, and Mr. Mulroney thought the suggestion was worthwhile.

Mr. Mulroney testified that he had several reasons for believing that memorializing the mandate was a good idea. First, Mr. Schreiber had been arrested on the strength of an extradition warrant in August 1999. Second, *the fifth estate* had broadcast a program about Mr. Schreiber in October 1999. Third, Mr. Schreiber had made a statement that Mr. Mulroney might have an income tax problem. Last, Mr. Schreiber had made an allegation that Mr. Mulroney might have committed perjury. Mr. Mulroney described Mr. Schreiber's conduct as not being the acts of a friendly man.

I feel constrained to observe, however, that there were other reasons why Mr. Mulroney would have wanted the mandate memorialized. In my view, he was in a dilemma in that the letter of request written on behalf of the Government of Canada referred to the fact that Mr. Mulroney had received money from Mr. Schreiber. Mr. Mulroney was well aware that money had been paid to him on three separate occasions by Mr. Schreiber. He knew he had never disclosed or recorded the fact of the payment of those monies up to that point. He was then in the process of making a voluntary disclosure to the Canada Customs and Revenue Agency concerning the money paid to him by Mr. Schreiber six to seven years earlier. He was also aware of the evidence he had given under oath at the examination before plea relative to the lawsuit he had commenced against the Government of Canada and others about

his relationship with Mr. Schreiber. I think it fair to say that the combination of all the foregoing factors would create a sense of unease in anyone.

Mr. Mulroney indicated that Mr. Doucet had a “pretty good” idea of what was happening with Mr. Schreiber in light of the fact that he (Mr. Doucet) had been informed about the mandate by Mr. Schreiber; that he had been debriefed by Mr. Mulroney with regard to the Queen Elizabeth meeting; and that he had been present at the meeting at the Pierre Hotel.

The Mandate Document

Mr. Mulroney stated that he first saw the mandate document when it was produced at the hearings of the Ethics Committee. He said he had nothing to do with drafting the document, nor did he ask Mr. Doucet to draft it.

Mr. Mulroney agreed with Mr. Wolson’s suggestion that, when Mr. Doucet prepared the mandate document, it came from three sources: Mr. Doucet’s own recollection, his conversations with Mr. Mulroney, and his conversations with Mr. Schreiber. Mr. Mulroney did not recall Mr. Doucet reviewing the mandate with him before his meeting with Mr. Schreiber on February 4, 2000; however, he accepted Mr. Doucet’s evidence that he had done so.

With reference to the mandate document bearing the handwriting,¹⁹⁰ Mr. Mulroney confirmed that the document was intended to represent the agreement he and Mr. Schreiber entered into on August 27, 1993. Mr. Mulroney also confirmed the accuracy of the section regarding a watching brief to develop economic opportunities, “including travelling abroad to meet with government and private sector leaders” and priority being given to Canadian-based manufacturing of peacekeeping and/or peace-making equipment in view of Canada’s prominence in the area. Mr. Mulroney stated that, as he understood it, the mandate was not limited precisely to a period of three years; however, he later construed from the payments that it was intended to last for that period.

With reference to the excerpt regarding the watching brief for developing “economic opportunities,” “including travelling abroad to meet” various individuals, Mr. Mulroney maintained that his work for Mr. Schreiber was exclusively international, though he acknowledged that the term “including” could refer to other work, such as meeting with “bankers and so on.”¹⁹¹

The Debriefing from Mr. Doucet After February 4, 2000

Mr. Mulroney stated that Mr. Doucet told him about the document after the February 4, 2000, meeting. Mr. Doucet informed him that the meeting with Mr. Schreiber had occurred and that he had been seeking to memorialize the agreement as a result of his concern about Mr. Schreiber’s readiness to do anything to avoid extradition. Mr. Doucet also read the mandate “in a quick telephone call”¹⁹² to

Mr. Mulroney. Mr. Mulroney confirmed that he did not ask that any changes be made because the document seemed to be “very largely accurate.”¹⁹³

Mr. Mulroney said that, when Mr. Doucet read the document to him, he knew the amount he had been paid was \$225,000. He remembered thinking that Mr. Schreiber had changed his version from \$300,000 to \$250,000. Mr. Mulroney did not pay much attention, though he thought that Mr. Schreiber had a different way of calculating expenses. Later, however, when being questioned by Mr. Auger, Mr. Mulroney stated that he knew the \$250,000 figure in the mandate document was wrong when Mr. Doucet communicated it to him, but the error was not meaningful to him because he had already undertaken to sever his relationship with Mr. Schreiber.

In explaining why he did not correct the duration of the retainer by stating that it was an ongoing retainer rather than one that lasted for three years, Mr. Mulroney said that the three-year interruption for the Airbus affair had made an impact on him during that time frame and that he did not sit down to calculate the mandate's period. He understood from conversations with Mr. Schreiber that he was looking at an open-ended arrangement, but he concluded, because of the nature of the three payments, that the mandate might have been three years.

Mr. Mulroney agreed that the three-year mandate was not entirely accurate because, at the Savoy Hotel in 1998, Mr. Schreiber raised the pasta matter for the first time, wanting Mr. Mulroney to do more work on his behalf. I pause here to note that Mr. Mulroney's evidence here contradicts what he said when he was questioned about the Savoy meeting. There, he stated Mr. Schreiber did not ask him to help with his pasta venture and any services he provided were not part of his retainer with Mr. Schreiber. Further, Mr. Schreiber had also asked Mr. Doucet at the end of the meeting on February 4, 2000, to speak with Mr. Mulroney about renewing the retainer arrangement.

According to Mr. Mulroney, the mandate document was not a document that was sent to him for his signature. He was told of its content during a brief telephone call and, had the document been sent to him, he would have studied it carefully, made the necessary corrections, and signed off on it.

In my view, the credibility of Mr. Mulroney's evidence that he wanted the mandate memorialized is strained by the fact that, once that had occurred, he apparently did not ask to see a copy of the mandate to ensure that it accurately reflected his arrangement with Mr. Schreiber. Moreover, when Mr. Doucet told him the mandate disclosed that the amount of money involved was \$250,000, Mr. Mulroney said nothing to correct the error.

Mr. Mulroney confirmed that, by 2000, he was established in his law firm. Despite that, it did not occur to him to have a colleague draft the document. He said the matter was in Mr. Doucet's hands and it was his idea. Had the document been sent to Mr. Mulroney, he said he would perhaps have had a colleague draft something or, more likely, he would have looked at it himself because he was the only one with information about it.

Conclusion

I have serious reservations about the mandate document and what it is purported by Mr. Doucet to represent. In this regard, I note that the description of the services to be rendered by Mr. Mulroney is not limited to travelling abroad or to an international mandate. Indeed, the description could apply equally to lobbying in Canada in respect of “opportunities relating to Canadian based manufacturing of peace keeping and/or peace making military equipment in view of Canada’s prominence in this area.” The amount of money shown fails to accord with what either Mr. Mulroney or Mr. Schreiber says was paid. I have mentioned my doubt that Mr. Doucet did not discuss the amount of the payments with Mr. Mulroney, his lifelong friend, when he was preparing the mandate document. I believe Mr. Doucet, ever the loyal foot soldier, was attempting to document the financial transaction between Mr. Mulroney and Mr. Schreiber. The mandate document appears to be an *ex post facto* attempt to legitimize the transaction according to Mr. Doucet’s understanding of what was necessary to accomplish this goal. I find myself in the position of being unable to place any weight on the mandate document as supporting either Mr. Schreiber’s version of the transaction or Mr. Mulroney’s version.

MR. DOUCET’S NOTES OF AUGUST 27, 2000

On August 27, 2000, Mr. Doucet made notes that summarized events relevant to Mr. Schreiber and Mr. Mulroney. The notes covered a period of time and many events, commencing with Mr. Doucet’s pre-1992 relationship with Mr. Schreiber, Mr. Schreiber’s subsequent assignment for Mr. Mulroney, the series of hotel meetings, the denouement of their commercial relationship, and Mr. Doucet’s meetings with Mr. Schreiber in 1999 and 2000.¹⁹⁴

Mr. Doucet’s Account

Mr. Doucet stated that he wrote these notes as an *aide-mémoire* and that they were compiled using previous notes made by him. They summarized events that were potentially important to Mr. Mulroney.

Beginning under the heading “Events Post 1992,” Mr. Doucet’s notes described the events leading up to the Mirabel meeting and its aftermath:

1. As best as I can recall in late summer of 1993 K.S. called me to discuss with me whether I could arrange a meeting between himself and Brian Mulroney (B.M.) to discuss the prospects of a consulting assignment involving international representations and watching brief for corporate opportunities involving companies in which K.S. had an interest.
2. Following my discussions with B.M. a meeting was arranged in late summer/early fall of 1993 between K.S. and B.M. to be held at the Mirabel Airport.

3. Subsequent to the Mirabel meeting B.M. informed me that he and K.S. had concluded an arrangement for an initial period of three years whereby B.M. through his consulting company would provide a watching brief and, if and where appropriate, make inquiries or representations in the international arena regarding corporate opportunities that could be of interest to K.S. It was also confirmed that B.M. would provide reports as appropriate.¹⁹⁵

With reference to paragraph 1, Mr. Doucet stated that “Bear Head” was clearly implied despite the absence of an explicit reference.

Mr. Doucet’s notes continue in relation to the Queen Elizabeth meeting:

4. I am aware that a meeting was held in Montreal in early 1994 between K.S. and B.M. pursuant to the above consultancy. (I do not recall if I had arranged this meeting but I recall B.M.’s report on it to me.)¹⁹⁶

Mr. Doucet confirmed that Mr. Mulroney had reported to him on the Queen Elizabeth Hotel meeting, and that he qualified his notes and corrected his recollection on several occasions.

I note in passing that, in his statement to Commission counsel, Mr. Doucet said he did not recall speaking to either Mr. Schreiber or Mr. Mulroney about the Queen Elizabeth Hotel meeting.

Mr. Doucet’s notes continue at paragraph 5 in relation to the Pierre Hotel meeting:

5. ... At this meeting which lasted approximately one hour, B.M. and K.S. discussed various matters of the on-going consultancy in the international arena. K.S. provided various materials to B.M. At the end of the meeting we went to the hotel dining room ...¹⁹⁷

Mr. Doucet agreed with Mr. Wolson that his notes do not mention Mr. Yeltsin, Mr. Mitterrand, China, or Thyssen / Bear Head Industries, but he maintained that Thyssen / Bear Head was “a given.”¹⁹⁸

The notes also summarize Mr. Doucet’s meeting with Mr. Schreiber on January 11, 2000:

8. ... At that meeting, among many other matters about which K.S. spoke, he told me, in answer to my specific question about what he proposed to say at his discoveries [in the lawsuit commenced by Mr. Schreiber against the Government of Canada] regarding the consultancy with B.M. that he agreed that the nature of the consultancy was to keep a watching brief world wide on possible opportunities for his (K.S.) companies; that B.M. was to report periodically on such opportunities; and that for those services a fee was being paid as well as to cover expenses. With respect to the fee K.S. stated that he could not be certain whether he would be treating these disbursements as “an advance” or a “loan” since that was only relevant to him in the context of his taxes.¹⁹⁹

Mr. Doucet acknowledged that Mr. Schreiber merely accepted the version of the mandate as it was put to him at that meeting. Mr. Doucet stated that his suggestion

was based on his knowledge of what Mr. Schreiber had told him regarding the Mirabel meeting and what he had heard at the Pierre Hotel meeting.

Mr. Doucet's notes conclude with a summary of his meeting with Mr. Schreiber on February 4, 2000:

9. I reported to B.M. on my discussions with K.S. (with K.S.'s knowledge and approval) and I suggested to B.M. that I meet again with K.S. to present in writing what he had told me the mandate for the consultancy was with B.M. and the term and fees. I met again with K.S. in my office in Ottawa on Feb 4/00 and I presented a written statement on the mandate consistent with what he (K.S.) had represented it to be. I left open the identification of the companies from which the mandate would emanate and the fees to cover services and expenses. With his own (K.S.) handwriting my notes show his identifying those companies and when I asked him what the fee was he told me that the fee for services and expenses had been set at \$250,000 for the period 93/94; 94/95; 95/96.

Furthermore, he (K.S.) asked me if B.M. would be interested in renewing the terms for a new contract to assist him in the strategic selling of a new spaghetti machine. I indicated to K.S. that I would bring this to B.M.'s attention. He told me that he thought B.M. could be of great assistance to him internationally in this corporate endeavor and he told me how much he regretted that the Airbus allegations had been casual [sic] to the interruption of their (KS and BM) consultancy agreement.²⁰⁰

Despite Mr. Mulroney's evidence to the contrary, Mr. Doucet said the word "renewing" should have been "reviewing." He vaguely recalled that discussions about spaghetti did occur at the February 4, 2000, meeting. He remembered the topic of spaghetti machines because he later reported it to Mr. Mulroney; he did not realize that Mr. Schreiber was in the "spaghetti business." Mr. Doucet stated that the February 4, 2000, meeting lasted 45 minutes. He confirmed that there are no notes of the meeting other than the mandate document.

Mr. Schreiber's Account

Mr. Schreiber gave evidence on the subject of Mr. Doucet's notes of August 27, 2000. He denied that he called Mr. Doucet in the late summer of 1993 to arrange a consulting agreement involving international representations. Rather, he intended to ask Mr. Mulroney to continue the Bear Head dialogue from their meeting on June 3, 1993. Mr. Schreiber wanted to know how Mr. Mulroney "feels and what he thinks how this is going to continue with a view of Ms. Campbell," who was soon to become prime minister. Mr. Schreiber denied that Mr. Mulroney's assignment was international.²⁰¹

Mr. Schreiber confirmed that Mr. Doucet arranged the meeting at the Mirabel Airport as detailed in paragraph 2 of Mr. Doucet's notes. However, Mr. Schreiber denied

the truthfulness of paragraph 3, which indicates that he and Mr. Mulroney concluded an arrangement at Mirabel for a three-year period in which Mr. Mulroney, through his consulting company, would provide a watching brief and make international inquiries or representations.

I note that Mr. Doucet refers to Mr. Mulroney's "consulting company" as being the vehicle Mr. Mulroney would use to provide the agreed-upon services to Mr. Schreiber. Mr. Mulroney testified, however, that the company, Cansult, was not established in relation to any work for Mr. Schreiber. He agreed that it was "pretty well" "completely and separate" from his dealings with Mr. Schreiber.²⁰² Mr. Mulroney also stated that he did not record the monies received from Mr. Schreiber in Cansult's books.

Mr. Schreiber confirmed that Mr. Doucet was aware of the Queen Elizabeth meeting, as indicated at paragraph 4 of his notes.

Mr. Schreiber denied that he and Mr. Mulroney discussed "international business" at the Pierre Hotel meeting. He said that all the discussions between him and Mr. Mulroney dealt with the White Paper and Montreal. Mr. Schreiber also did not remember giving Mr. Mulroney materials at the meeting, as suggested in the notes, though he did recall giving Mr. Mulroney an envelope containing \$100,000 in cash.

Mr. Schreiber confirmed that he met with Mr. Doucet on January 11, 2000, but indicated that the other parts of paragraph 8 of the notes that were attributed to him were false.

Relative to Mr. Doucet's note of the meeting of February 4, 2000, Mr. Schreiber confirmed that the meeting occurred but denied that a mandate, as Mr. Doucet represented it to be, was provided to him. Mr. Schreiber said that he did not type the mandate sheet and that it was not consistent with anything he represented to Mr. Doucet. Mr. Schreiber also denied that Mr. Doucet left open spaces on the document for the identification of the relevant companies and the fee, or that he identified the companies, the fee, or the relevant period of the mandate.

Mr. Schreiber agreed that he may have discussed with Mr. Doucet the ongoing plans related to Spaghetissimo, but he said he discussed nothing in relation to a mandate with Mr. Mulroney. He denied saying to Mr. Doucet that Mr. Mulroney "could be of great assistance to him internationally."²⁰³

In relation to the notes as a whole, and particularly paragraphs 1, 3, and 8, which use the term "watching brief," Mr. Schreiber testified that it was not a term he used. He also denied using the term "international" in its various forms in the document at paragraphs 1, 3, and 5, as this was not a term he used in conversation with Mr. Doucet or Mr. Mulroney.

Mr. Mulroney's Account

Mr. Mulroney was also questioned about Mr. Doucet's notes of August 27, 2000. He agreed with paragraphs 1 through 5 and 9 of Mr. Doucet's notes (as they were described

to him), which pertain to Mr. Schreiber's request for a meeting; Mr. Schreiber and Mr. Mulroney's meetings at the Mirabel Airport, the Queen Elizabeth Hotel, and the Pierre Hotel; the arrangement; and Mr. Schreiber's meeting with Mr. Doucet in Ottawa on February 4, 2000.

Conclusion

As with the mandate document, I have concluded that it is difficult, if not impossible, to place any reliance on Mr. Doucet's notes of August 27, 2000, as being probative of anything. Whatever the reason, Mr. Doucet has demonstrably proven that he has either a very poor memory or the best selective memory ever. To compound the problem, some facts are included in the notes that are provably wrong. To mention but one example: Mr. Doucet's reference to the use of Mr. Mulroney's consulting company as the vehicle through which Mr. Mulroney would do business with Mr. Schreiber. That simply did not occur.

In fairness to Mr. Doucet, I note his evidence that, sometime ago, he underwent open-heart surgery and his belief that this operation has adversely affected his memory. There was no independent evidence before the Commission as to the extent, if any, of the impact of Mr. Doucet's heart problems on his memory.

Mr. Doucet's Airbus Correspondence

In his testimony before the Commission, Mr. Doucet was examined on three pieces of correspondence he had written to Mr. Schreiber regarding the sale of Airbus planes to Air Canada between 1992 and 1994.

Before commencing his questioning of Mr. Doucet on the issue of the Airbus correspondence, Mr. Wolson sought permission from me to do so and to tender in evidence the three pieces of correspondence of which Mr. Doucet was purportedly the author. Mr. Wolson, in his submission to me, said that he recognized the Inquiry was intended to focus on payments made by Mr. Schreiber to Mr. Mulroney related to the Bear Head Project and that, in wishing to pursue the issue of the Airbus correspondence, he was not attempting to expand the mandate of the Commission. Mr. Wolson described Mr. Doucet as being in "a unique situation," in that he had attended one of three meetings between Mr. Schreiber and Mr. Mulroney on December 8, 1994, and he had some knowledge of two other meetings, in that he was briefed by both Mr. Schreiber and Mr. Mulroney regarding the meeting of August 27, 1993, and was briefed regarding the meeting of December 18, 1993, by Mr. Mulroney.

Mr. Wolson submitted that one of the questions I am to investigate and report on is why the money was paid by Mr. Schreiber to Mr. Mulroney. He pointed out that one of the three pieces of the Airbus correspondence appears to have been sent

by Mr. Doucet on the same day (August 27, 1993) as the first payment of cash by Mr. Schreiber to Mr. Mulroney.

Mr. Wolson asserted that the narrow purpose for his wanting to question Mr. Doucet on the Airbus correspondence was to review documents – namely, the three pieces of correspondence – that may or may not be relevant and that may answer or may in some respect assist me in determining why the payments were made.

No counsel acting for the parties objected to Mr. Wolson's questioning Mr. Doucet for the narrow purpose articulated in the preceding paragraph. I therefore permitted Mr. Wolson to proceed but directed him that his questions must be confined to determining, if possible, why the payment on August 27 and others were made.

In his evidence, Mr. Doucet confirmed that he wrote the March 24, 1992,²⁰⁴ letter that was sent to Mr. Schreiber in Germany. In this letter, Mr. Doucet stated that he did not want to “bother” Mr. Schreiber with “the matter of the Birds.” However, he decided to write, given that Mr. Schreiber had “insisted” that he (Mr. Doucet) raise the matter with him by March 15, 1992. He continued that he had not heard from Frank Moores.

In his testimony before the Commission, Mr. Doucet stated that he had “absolutely no recollection of this letter.”²⁰⁵ He acknowledged that the reference to “birds” refers to airplanes, fixed-wing or helicopters, and that “birds” is a generic word that is used. The signature contained in the letter appeared to be his own, and he presumed he sent the letter.

On August 27, 1993, Mr. Doucet wrote a memorandum²⁰⁶ to Mr. Schreiber stating that Mr. Biro of Air Canada had confirmed that 34 Airbus aircraft had been “purchased and delivered to Air Canada.” The memorandum included an attached fax cover sheet, dated August 27, 1993, from Denis A. Biro²⁰⁷ to Mr. Doucet outlining the Airbus A-320 deliveries from 1990 to 1993, which totalled 34 units. Mr. Doucet also expressed his “hope that this evidence, many times stated before, is emphatically and categorically relayed to F.M.” [presumably Frank Moores]. Both the memorandum and the attachment carry a fax date stamp of August 30, 1993.²⁰⁸

Mr. Doucet testified that he had no memory of the memorandum, nor did he have an independent recollection of Mr. Biro. Despite the fact that the above-noted letter is dated August 27, 1993, and despite his lack of memory about the memorandum itself, Mr. Doucet was able to testify that the Mirabel meeting, which occurred that very same day, had nothing to do with Airbus.

The third piece of correspondence involving Airbus planes referred to in Mr. Doucet's testimony was written on April 28, 1994.²⁰⁹ Mr. Doucet confirmed in the letter that Air Canada had purchased 34 A-320 aircraft from Airbus. Then he continued: “For our purpose, Karlheinz, we now have what we need and it is accurate

beyond any doubt ... For me settling this matter is so very important for reasons I will tell you about in person.”²¹⁰

Mr. Doucet acknowledged that his signature was on the letter, but he said he had no memory of writing it. He noted that portions of the letter do not reflect his writing style. He said he did not know who had given him the “assignment” referred to in the letter, although he was reporting to Mr. Schreiber in the letter.

In my view, Mr. Doucet is a man with a very selective memory. I do not believe him when he says he has no recollection of writing any of the three pieces of correspondence referred to in the preceding paragraphs.

Mr. Mulroney testified that his financial dealings with Mr. Schreiber did not involve anything to do with the Airbus matter. Mr. Schreiber agreed with that assertion. There is nothing in the correspondence to shed any light on why the payments in August and December 1993 and December 1994 were made to Mr. Mulroney, which was the sole basis on which I allowed questioning about this Airbus-related correspondence. There is nothing in the correspondence or, for that matter, in any other evidence before me that links Mr. Mulroney to this correspondence, to Airbus, or to any potential business dealings between Mr. Doucet and Mr. Schreiber other than Bear Head.

Eurocopter Proceedings

In September and November 2004 Mr. Schreiber testified as a witness over the course of 11 days before Justice Paul Bélanger in the preliminary hearing of *R. v. MBB Helicopter Canada* (Eurocopter proceedings).²¹¹ MBB Helicopter Canada was a Canadian company controlled by a German company that had dealings with the Government of Canada regarding the sale of helicopters to the military. MBB Helicopter Canada was the subject of an investigation by the RCMP; like Airbus and Bear Head, was referred to in the LOR sent by the Department of Justice (Canada) to the Swiss Authority; and was subsequently charged with one or more criminal offences in connection with the helicopter transaction. Several excerpts from those transcripts relate to the agreement between Mr. Mulroney and Mr. Schreiber.

Mr. Schreiber confirmed that, during the Eurocopter proceedings, he did not state that he had met Mr. Mulroney at Harrington Lake and made an agreement to do business in the future, even though he was asked such questions as, “Apart from the breakfast meeting, was there any other contact [with Mr. Mulroney]?”²¹² Mr. Schreiber’s response to this question from Mr. Bernstein, the Crown attorney, was simply that he met Mr. Mulroney once on Parliament Hill. In his evidence before me, however, Mr. Schreiber indicated that Mr. Bernstein had not asked him to provide a complete list of his meetings with Mr. Mulroney before he (Mr. Bernstein) moved on to MBB-specific questions.

In my view, Mr. Schreiber’s evidence regarding any other contact with Mr. Mulroney was not entirely true. His justification for not telling the truth is that

he was not asked to provide a complete list of his meetings with Mr. Mulroney. That, I feel constrained to say, is the use of an artful device on his part.

Mr. Schreiber also agreed that he did not state in the Eurocopter proceedings, when he was asked if he hired anyone from government in 1985 to 1993, that he had hired Mr. Mulroney in connection with the Bear Head Project. With respect to when he hired Mr. Mulroney, Mr. Schreiber stated on November 24, 2004: “I think it was close to December or even – maybe even ’94.”²¹⁵ The examination continued, and Mr. Schreiber stated that Mr. Mulroney’s hiring dealt with his position as a member of the board of “Midland Archer Daniels” [sic].²¹⁶ Mr. Schreiber stated that he also wanted

to hire Mr. Mulroney for Thyssen to be doing the same thing he’s doing now,²¹⁵ and it would have been a nice thing to have a previous Canadian Prime Minister on a peacekeeping track for Thyssen products ... Unfortunately, we had no chance for that, but yes, and they told – I was involved in the pasta business and enriched Durham [sic] semolina products and this is the moment when I spoke to him about Archer Daniels. And he provided me with some material on it.²¹⁶

Mr. Schreiber stated in the Eurocopter proceedings that his plan to hire Mr. Mulroney was in the period after Mr. Mulroney stepped down as prime minister, but he did not recall if it was before the election of the fall of 1993.²¹⁷ Mr. Schreiber testified before me that Mr. Mulroney gave him the brochures for Archer Daniels Midland in 1994; until then, nothing had happened.

Mr. Schreiber also testified before me that he knew information about his dealings with Mr. Mulroney, their relationship, and the fact that he paid Mr. Mulroney in cash were all in the public domain in 2004, and he had not been trying to hide the fact that he had a relationship with Mr. Mulroney. Mr. Schreiber also suggested that his answers in the Eurocopter proceedings were influenced by the various debates among counsel about his answers and the judge’s involvement. Mr. Schreiber stated that he gave truthful evidence at the Eurocopter proceedings and that he was frustrated that the questions were not more straightforward.

I find Mr. Schreiber’s evidence at the Eurocopter preliminary inquiry to be unworthy of belief. In my opinion, the evidence he gave before Justice Bélanger was contradicted by him in the evidence he gave before me relative to his relationship with Mr. Mulroney.

For example, before Justice Bélanger, Mr. Schreiber swore that he hired Mr. Mulroney close to December 1993, maybe even 1994. In his evidence before me, Mr. Schreiber said at one point that he and Mr. Mulroney reached an agreement when they met at Harrington Lake on June 23, 1993, while Mr. Mulroney was still the prime minister, and that he paid Mr. Mulroney the first instalment of his fee on August 27, 1993, at the hotel at Mirabel. The testimony Mr. Schreiber gave before Justice Bélanger as to when he retained Mr. Mulroney leads me to seriously question

the veracity of his evidence before me that an agreement between them was reached at Harrington Lake on June 23, 1993. The evidence given before Justice Bélanger lends support to Mr. Mulroney's position that the retainer was entered into on August 27, 1993, at the hotel at Mirabel Airport.

Mr. Schreiber told Justice Bélanger that he hired Mr. Mulroney in conjunction with his pasta business. His testimony before me was that he hired Mr. Mulroney to assist in bringing the Bear Head Project to fruition. Despite his denial before me that he hired Mr. Mulroney to work internationally, that is what he told Justice Bélanger.

Other Perspectives on the Services Rendered

Luc Lavoie acted as Mr. Mulroney's spokesperson from 1995 to 2007. While he was compensated for his services between 1995 and 1997, from 1997 onward he did not receive any compensation. Mr. Lavoie continued to work for Mr. Mulroney out of "friendship, loyalty, affection, respect."²¹⁸ Mr. Lavoie confirmed that, during those years, he gave a "great number of interviews and a great deal of time."²¹⁹ He had a "close working relationship" with Mr. Mulroney.²²⁰

Mr. Lavoie first heard of the cash payments in 2000 when he received a phone call from Mr. Mulroney's lawyer, Gérald Tremblay. He learned that Mr. Mulroney had acted as a consultant for Mr. Schreiber and had received a cash retainer in three payments of tens of thousands of dollars on which tax had been paid. Mr. Lavoie testified that Mr. Tremblay was instructed by Mr. Mulroney to relay this information in light of the fact that Mr. Schreiber had commenced a lawsuit against Mr. Lavoie for his comments to *the fifth estate* that he was a liar. According to Mr. Lavoie, Mr. Mulroney did not at that time contact him to provide him with any details.

In Mr. Lavoie's understanding, Mr. Mulroney had been retained as a strategic adviser. He confirmed that part of Mr. Mulroney's mandate was to carry out promotion internationally to advance Thyssen's interests. Mr. Mulroney's mandate had nothing to do with lobbying, he said.

Mr. Lavoie met with Mr. Kaplan on January 4, 2002, and March 8, 2006. Their discussions were memorialized in Mr. Kaplan's notes.²²¹ During the January 4, 2002, interview, Mr. Lavoie told Mr. Kaplan that Mr. Schreiber approached Mr. Mulroney and asked him to act as an adviser with respect to international business transactions. He noted that the money was "used for several services which were provided including organizing meetings with senior international executives, such as people at Archer Midland [sic] in connection with Schreiber's pasta business and advising Schreiber on international business transactions."²²²

Mr. Lavoie advised Mr. Kaplan that the amount of money Mr. Mulroney received was much less than \$300,000. When examined on this point, Mr. Lavoie testified that he did not recall this discussion; however, he accepted Mr. Kaplan's notes as accurate and

did not dispute the content of the interview. He stated that the information he provided to Mr. Kaplan must have been information that Mr. Mulroney had given him.

Mr. Kaplan testified that he received different explanations from Mr. Lavoie regarding the purpose of the payments. First, the money Mr. Mulroney received was to assist Mr. Schreiber with a “pasta machine.” Second, the money was to lobby for the Bear Head Project. Third, the money pertained to work on behalf of a client and that the matter was governed by solicitor-client privilege. Fourth, Mr. Mulroney required the money because of his financial situation.

In a November 5, 2007, email to journalist Bruce Champion-Smith, Mr. Lavoie summarized Mr. Mulroney’s mandate as follows: “[T]he money was to get Mr. Mulroney’s help in building a Light Armoured Troop Carrier factory for Thyssen, a major German Corporation, in the region of Montreal and to launch a chain of pasta restaurants in North America.” Mr. Lavoie declared that all the facts stated in this email were those he knew to be “totally true.”²²³ In his evidence, Mr. Lavoie confirmed that this description is still how he would characterize Mr. Mulroney’s mandate.

Mr. Lavoie testified that the email to Mr. Champion-Smith was composed on his BlackBerry while he was in Paris on a holiday with his daughter. In his explanation of the context in which he sent the message, he said that, in the days following the broadcast of *the fifth estate*, which I note was October 31, 2007, he was contacted by Mr. Champion-Smith, who he determined was not clear on the chronology of events. Mr. Lavoie thought he should put the matter in context as objectively as possible. According to Mr. Lavoie, he did not communicate with Mr. Mulroney before sending the email.

When Mr. Mulroney was referred in his testimony before me to the above-mentioned email, he stated that he had not seen it before. He testified that he was not consulted before or after it was written. Mr. Mulroney agreed that the portion pertaining to the purpose of the money was inaccurate, but stated that this mistake was unintentional.²²⁴ In his opinion, when Mr. Lavoie stated, “I know all these facts to be totally true,” he (Mr. Lavoie) believed that they were correct.

Pat MacAdam was a long-time friend and supporter of Mr. Mulroney. He testified that he has known Mr. Mulroney since 1955 and that they are close friends. Mr. MacAdam worked as the caucus liaison officer for Mr. Mulroney while he was the leader of the official opposition. From 1990 to 1993 Mr. MacAdam was a senior consultant for and the director of Government Consultants International.

Mr. MacAdam testified that, over a luncheon meeting, Mr. Kaplan asked him whether he would convince Mr. Mulroney to meet with him as part of his research for the book he was writing entitled *Presumed Guilty*. Accordingly, Mr. MacAdam recommended that Mr. Mulroney pursue this opportunity, which he ultimately did. Mr. MacAdam testified that he felt “responsible for being the intermediary.”²²⁵

In a July 18, 2004, interview with Mr. Kaplan,²²⁶ Mr. MacAdam stated that he had “no idea” what Mr. Mulroney did to earn the money Mr. Schreiber paid him. He told Mr. Kaplan that he “read that Schreiber was trying to sell spaghetti” and that Mr. Mulroney informed him he had received \$225,000, not \$300,000, from Mr. Schreiber. He continued: “I am still in touch with him. He has been in China on a boat.”²²⁷

Mr. Kaplan testified that he learned about Mr. Mulroney’s explanation that he had travelled to China only when Mr. MacAdam wrote to him. He testified that, if there are no references to this trip in his notes, then Mr. Mulroney never made mention of it in their interviews. Mr. Kaplan stated that the interviews he conducted with Mr. Mulroney lasted several hours and occurred over a six-year period, from 1997 to 2003. He said he had not heard of Mr. Mulroney’s trips to France and Russia until Mr. Mulroney testified before the Ethics Committee, in December 2007.

Mr. MacAdam testified that, shortly before Mr. Kaplan’s book *A Secret Trial* was to be published in 2004, he received an email from then journalist Mike Duffy that consisted of a page from the website of the Montreal publisher McGill-Queen’s University Press. The website featured this second book that Mr. Kaplan had written about Mr. Mulroney, and Mr. MacAdam described the summary of the book there as “devastating.” He emailed this page to Mr. Mulroney and stated that he followed up with a phone call. According to Mr. MacAdam, Mr. Mulroney was upset. Although he acknowledged the receipt of money, he informed Mr. MacAdam that it totalled \$225,000, not \$300,000. Mr. MacAdam did not ask what the money was for, nor did he inquire why there was this discrepancy in the amounts cited by Mr. Schreiber and Mr. Mulroney. In his testimony, Mr. MacAdam did not explain why he did not ask Mr. Mulroney what he was paid for. He explained that Mr. Mulroney simply said that the payment was “for services. He was commissioned to act as a representative or an agent of Mr. Schreiber. What he was selling I don’t know.”²²⁸ Mr. MacAdam knew only what he read in the newspaper. He testified that Mr. Mulroney did not volunteer any additional information in this phone conversation.

On July 19, 2004, Mr. MacAdam wrote a letter to Mr. Kaplan. He testified that he “probably wrote the letter the same day after the telephone conversation [with Mr. Mulroney].”²²⁹ According to Mr. MacAdam, the letter was unsolicited and was written of his own accord because he felt he was to blame for the release of Mr. Kaplan’s book. I note that the letter written by Mr. MacAdam followed by one day his interview with Mr. Kaplan.

In this letter, Mr. MacAdam stated that he had gone through his old files, correspondence, and emails and found that Mr. Schreiber hired Mr. Mulroney to sell Bear Head armoured vehicles to China.²³⁰ He also stated that Mr. Schreiber engaged Mr. Mulroney to explore the sale of pasta machines.

1. Karlheinz hired Mulroney to sell Bearhead [sic] armoured vehicles to China. The vehicles were/are top of the line. Former Chief of the Defence Staff Ramsey Withers told me Bearhead's vehicle was the Cadillac of armoured vehicles – heavily armoured and capable of performing for four days in air conditioned comfort in the event of a gas attack. Ramsey said the vehicles the Canadian military bought were so lightly armoured that a bullet from a standard NATO rifle could pierce the skin. He also said that the crew would be goners in a chemical or biological attack.
2. Schreiber also engaged Mulroney to explore the sale of pasta machines. The machines required a special kind of wheat and Schreiber thought that this would be right up the alley of Archer, Daniel, Midland. Mulroney was a consultant to ADM. I found this out from a former Hill aide who went to work for ADT [sic] in one of their installations in the mid-West.

Mr. MacAdam testified that the “correspondence” he referred to consisted of one newspaper clipping. Although he used the term “correspondence” in the letter, he testified that he did not have any “correspondence.” Similarly, though he used the term “emails” in the letter, he testified that he did not have any “emails” that dealt with Mr. Mulroney selling Bear Head vehicles to China.

When questioned by Commission counsel Nancy Brooks regarding why he stated that he had “correspondence” and “emails,” Mr. MacAdam testified that he had files of newspaper clippings from the *Globe and Mail* which noted that Mr. Mulroney was in China. Mr. MacAdam testified that he did not know what Mr. Mulroney was doing in China – he knew that Mr. Mulroney was commissioned and that the two products were pasta machines and Bear Head. He said that he probably received this information regarding sales to China “from Elmer MacKay or Bob Coates,” a former minister of defence in the Mulroney government. Later in his testimony, however, Mr. MacAdam acknowledged that Mr. MacKay did not inform him, nor did anybody else.

Mr. MacAdam was questioned further on the source of his knowledge, as drafted in his letter of July 19, 2004, relating to the purpose of the payments, given that he had indicated in his interview with Mr. Kaplan only the day before that he did not know. Mr. MacAdam could not explain how he learned of the explanation provided in the letter in that one-day interval. When asked whether he called Mr. Mulroney after the July 18 interview with Mr. Kaplan to ask him what the money was for, Mr. MacAdam testified that he did not, despite the fact that he stated earlier that they had spoken before he sent the letter.

Mr. MacAdam refuted the notion that he read this information regarding China and pasta in the newspaper between July 18 and 19, 2004, and stated that he read it before “Luc Lavoie was quoted as saying that he was selling spaghetti[,] whereas it was a pasta machine.”²³¹ When asked how he knew in July 2004 that Mr. Mulroney was selling vehicles to China, he stated that it was probably an assumption.

In my view, the evidence given by Mr. MacAdam as to how it was that, in an interview on July 18, 2004, he didn't know what Mr. Mulroney did to earn the money Mr. Schreiber paid him, and one day later he wrote in a letter that Mr. Schreiber hired Mr. Mulroney to sell Bear Head armoured vehicles to China, to be a complete falsehood on his part. In Mr. MacAdam, I had before me a witness who seems to believe that demonstrating his loyalty to Mr. Mulroney is more important than anything else.

The problem with Mr. MacAdam's attempted demonstration of loyalty is that it causes a problem for Mr. Mulroney, who denied throughout his evidence that his role was to sell Bear Head armoured vehicles to China. As Mr. Mulroney well knew, such a sale was impossible. Mr. MacAdam's evidence therefore conflicts with Mr. Mulroney's evidence. As I said earlier in this chapter, I am not able to conclude that Mr. Mulroney spoke to the Chinese leaders on Mr. Schreiber's behalf. I am left with no credible evidence that Mr. Mulroney took any action in relation to China.

The foregoing sections of this chapter complete my summary of the evidence before me relating to the issues identified in the six relevant questions from the Terms of Reference which are set out at the beginning of the chapter. I now turn to an analysis of that evidence with a view to drawing conclusions on those issues.

Analysis of Evidence and Findings Regarding the Six Questions Raised in the Terms of Reference

At the outset of this chapter, I listed the six questions from the Terms of Reference that deal with the agreement entered into by Mr. Schreiber and Mr. Mulroney. I now deal with an analysis of the evidence that is relevant to each of those questions and make findings in respect to them.

QUESTIONS 2 AND 3

2. *Was there an agreement reached by Mr. Mulroney while still a sitting prime minister?*
3. *If so, what was that agreement, when and where was it made?*

I have reviewed in detail the evidence of Mr. Smith, Mr. Doucet, Mr. Kaplan, Mr. Mulroney, and Mr. Schreiber touching on this issue, particularly as it relates to the meeting that occurred between Mr. Schreiber and Mr. Mulroney at the residence of the prime minister at Harrington Lake on June 23, 1993.

My assessment of Mr. Schreiber's evidence respecting the meeting at Harrington Lake on June 23 is that some of it is true, some of it is partly true, and some of it is not true at all. I confess to having considerable difficulty dealing with Mr. Schreiber's

evidence about what occurred because, ultimately, I am called upon to make a choice as to which one of his versions, if any, is true. In assessing Mr. Schreiber's evidence, I have therefore considered the evidence of other witnesses who also testified about the meeting on June 23 at Harrington Lake in order to ascertain whether, and to what degree, that evidence coincides with Mr. Schreiber's.

Having considered all the evidence, I have no doubt that it was at Mr. Schreiber's behest that Mr. Doucet arranged for him to meet with Mr. Mulroney at Harrington Lake on June 23. In my view, Mr. Schreiber is a man enthralled by people in positions of power. He became accustomed to using Mr. Mulroney, a person in a position of power, in an attempt to achieve his objectives. He wanted to meet with Mr. Mulroney one last time while he still held the office of prime minister – the highest office that any elected official in Canada can hold. It is plausible that Mr. Schreiber hoped to ensure, by this meeting, that he would have an ongoing relationship with Mr. Mulroney after he stepped down as prime minister.

The evidence of both Mr. Schreiber and Mr. Mulroney satisfies me that, during the course of their meeting at Harrington Lake, they did discuss a number of subjects, including the Bear Head Project, to the extent that Mr. Mulroney expressed regret that the government he had led had not succeeded in bringing the project to fruition. I am satisfied they also discussed the reunification of Germany and the upcoming Canadian election, including Mr. Mulroney's prediction that Ms. Campbell would succeed in winning a majority government.

Although Mr. Schreiber testified that one of his purposes in meeting with Mr. Mulroney on June 23 was to help him with respect to his financial troubles, that subject was not discussed. I note, however, that Mr. Schreiber said in his evidence that he told Mr. Mulroney he would check to see what money was available for the Bear Head Project in Montreal. That statement, if it was made by Mr. Schreiber, was misleading because, as he subsequently acknowledged, he knew the amount of money that was available. Mr. Mulroney denied that Mr. Schreiber made any mention of having to check if any money remained in an account regarding the Bear Head Project. In my opinion, it is unlikely that such a comment was made by Mr. Schreiber.

As I observed earlier in this chapter, Mr. Schreiber gave four different versions during the course of testifying before me as to how he arrived at the agreement he made with Mr. Mulroney. In contrast, Mr. Mulroney took the position in his evidence that he made absolutely no agreement with Mr. Schreiber on June 23. He testified that nothing was established at Harrington Lake. I accept what Mr. Mulroney said as true. Subsequent to the meeting of June 23, 1993, Mr. Schreiber gave a number of interviews to William Kaplan. In the course of those interviews Mr. Schreiber again gave four different versions of what had occurred during the meeting on June 23. What was clear from all four versions was that the meeting had occurred and the Bear Head Project was discussed. Mr. Mulroney's position was that Bear Head was discussed to a limited extent only.

I think Mr. Schreiber's statements to Mr. Kaplan on March 31, 2004, could be taken to support Mr. Mulroney's denial that any agreement was reached between him and Mr. Schreiber at Harrington Lake. During that interview Mr. Schreiber told Mr. Kaplan that, after Mr. Mulroney left office, he hoped to get his support for the Bear Head Project. That is markedly different from saying that an agreement had been reached at Harrington Lake on June 23 when Mr. Mulroney was still the prime minister. Mr. Schreiber also told Mr. Kaplan in that same interview that Mr. Mulroney, as a former prime minister, would make a good representative for Thyssen to support the sale of peacekeeping and environmental protection equipment out of Canada. However, I am not willing to draw a firm conclusion as to what Mr. Mulroney and Mr. Schreiber discussed at this meeting based only on Mr. Kaplan's notes of what Mr. Schreiber told him.

Although it is not important in the grand scale of things, I am satisfied, again having considered all the evidence, that Mr. Smith, Mr. Mulroney's executive assistant, drove Mr. Schreiber to Harrington Lake in his jeep on the morning of June 23. There is no evidence before me that I am prepared to accept indicating how Mr. Schreiber made his way back to his home from Harrington Lake. I am satisfied on the basis of Mr. Smith's evidence that neither Mr. Mulroney nor anyone on his behalf arranged a limousine to transport Mr. Schreiber to or from Harrington Lake.

FINDINGS

I note that Mr. Schreiber withdrew funds and had cash ready to give to Mr. Mulroney at the August 27, 1993, meeting at the Mirabel Hotel. This fact lends some credence to the claim that the two men did discuss some sort of continuing relationship during their meeting at Harrington Lake. However, having considered all the evidence on the issue of what transpired, or did not transpire, at the meeting at Harrington Lake on June 23, 1993, I find that no agreement was reached between Mr. Schreiber and Mr. Mulroney on that date. In my view, the truth as to what occurred can be found in the evidence Mr. Schreiber gave when he was cross-examined by Mr. Pratte and in the interview Mr. Schreiber gave to Mr. Kaplan on March 31, 2004.

Mr. Schreiber's testimony was that, at Harrington Lake, they had an agreement "to work together in the future." Mr. Mulroney was adamant in his testimony that there was no agreement to work together in the future. Even if I accept Mr. Schreiber's evidence on this point, the vagueness of the proposition and the lack of particularity and details do not support a finding that a formal agreement was reached while Mr. Mulroney was still prime minister.

I find that, although Mr. Schreiber hoped to obtain Mr. Mulroney's support with respect to the Bear Head Project after Mr. Mulroney left office, they neither discussed that issue nor reached any agreement about it on June 23, 1993, at Harrington Lake. I disbelieve Mr. Schreiber's evidence that Mr. Mulroney told him he (Mr. Mulroney)

could help with the Bear Head Project once Ms. Campbell became the prime minister. Moreover, it is abundantly clear, on a close examination of Mr. Schreiber's evidence when he was cross-examined by Mr. Pratte, that he and Mr. Mulroney did not reach any agreement that day at Harrington Lake, while Mr. Mulroney was still the sitting prime minister of Canada – and I so find.

As I have concluded, in answer to Question 2 of the Terms of Reference, that no agreement was reached by Mr. Mulroney while still a sitting prime minister, I need not answer Question 3 (If so, what was that agreement, when and where was it made?).

QUESTIONS 4 AND 5

4. *Was there an agreement reached by Mr. Mulroney while still sitting as a Member of Parliament or during the limitation periods prescribed by the 1985 ethics code?*
5. *If so, what was that agreement, when and where was it made?*

By virtue of Question 4, I must attempt to determine whether, while Mr. Mulroney was still sitting as a member of parliament, he entered into an agreement with Mr. Schreiber. If my answer is in the negative, I need proceed no further. However, if my answer is in the affirmative, I must go on to determine the nature of the agreement made by Mr. Schreiber and Mr. Mulroney as well as when and where it was made.

The evidence is clear that, although Mr. Mulroney ceased to be the prime minister on June 24, 1993, he remained a member of parliament until September 8, 1993, when Parliament was dissolved and an election called for October 25, 1993. It follows that, if Mr. Mulroney entered into an agreement with Mr. Schreiber between June 25, 1993, and September 8, 1993, he did so while still sitting as a member of parliament.

I have no difficulty in finding that an agreement was made between Mr. Schreiber and Mr. Mulroney while he was a member of parliament. It was made at a hotel at Mirabel Airport near Montreal on August 27, 1993. Both Mr. Schreiber and Mr. Mulroney agree on these facts. Each of them asserts that they entered into some sort of retainer agreement during the course of that meeting. Cash, in an amount of \$75,000 or \$100,000 in \$1,000 bills, was paid by Mr. Schreiber and accepted by Mr. Mulroney on this occasion.

That said, my task in determining the nature of the agreement made during the course of the Mirabel meeting is fraught with difficulty in light of two factors: the failure of Mr. Schreiber and Mr. Mulroney to memorialize their agreement in writing or to create a paper trail; and the significant conflict in the evidence they each gave concerning what they agreed to at the Mirabel meeting.

Briefly put, Mr. Schreiber's position is that, on August 27, 1993, he retained Mr. Mulroney for the purpose of lobbying government on behalf of Thyssen or Bear Head Industries with the objective of establishing a production facility in the east end of Montreal. Mr. Mulroney's position, in contrast, is that his mandate, as at August 27, 1993, was to work internationally to promote the sale of light armoured vehicles produced by Thyssen.

For the reasons that follow, I reject Mr. Schreiber's evidence that he retained Mr. Mulroney to work domestically. Rather, I accept Mr. Mulroney's evidence that the retainer was international in scope.

I have considered the evidence of Mr. Doucet, who testified that, when Mr. Schreiber requested him to arrange a meeting with Mr. Mulroney, he said the purpose of the meeting was to discuss with Mr. Mulroney the possibility of retaining him to promote Thyssen vehicles internationally. Mr. Schreiber denied telling Mr. Doucet anything about the purpose of the meeting he was seeking with Mr. Mulroney. According to Mr. Doucet, he related to Mr. Mulroney what Mr. Schreiber had said about the purpose of the meeting. According to Mr. Mulroney, Mr. Doucet told him that Mr. Schreiber wanted to discuss an international mandate on behalf of his company or himself or a group of companies.

To Mr. Doucet's knowledge, Mr. Schreiber had met with Mr. Mulroney only two months earlier, at Harrington Lake. In my opinion, Mr. Doucet would have expected that, when he spoke to Mr. Mulroney about the proposed meeting, Mr. Mulroney would want to know why Mr. Schreiber wished to meet with him. It is reasonable to infer, as I do, that Mr. Doucet would have inquired of Mr. Schreiber the purpose of the meeting he was asking him to arrange with Mr. Mulroney so he (Mr. Doucet) could relate that purpose to Mr. Mulroney when he called to arrange it.

Mr. Mulroney says that, during the course of a discussion he had with Mr. Doucet following the Mirabel meeting, he told him he was going to be proceeding with the mandate he had earlier discussed with Mr. Doucet.

Mr. Schreiber gave sworn evidence in another forum, before Justice Paul Bélanger at the preliminary inquiry in what has been referred to as the Eurocopter proceedings, that he retained Mr. Mulroney to work internationally. Before me, however, his sworn evidence was that he retained Mr. Mulroney for a domestic mandate.

Mr. Schreiber strikes me as a man who is politically astute when it comes to knowing where the power in government lies and how to gain access to the person or people who wield that power. The evidence discloses that he did not hesitate to use others to assist him in gaining access to people who wield real power in government. A good example of Mr. Schreiber's ability to gain such access can be seen from the numerous times he was able to meet with Mr. Mulroney while he was prime minister. On the basis of the evidence I heard and read, it seems to me that Mr. Schreiber was able to get the ear of Prime Minister Mulroney whenever

he wished to do so. In order to gain such frequent access to the prime minister, Mr. Schreiber used the services of Mr. Doucet and Mr. MacKay, both friends and confidants of Mr. Mulroney.

A second example of Mr. Schreiber's political acumen can be seen in his retaining the services of Marc Lalonde, for the purpose of lobbying the federal government, shortly after the Liberals were elected to govern in the federal election held on October 25, 1993. Mr. Lalonde was, and remains, a well-respected lawyer. More important to Mr. Schreiber, though, Mr. Lalonde had served in various portfolios as a cabinet minister in earlier, successive Liberal governments. It is evident that Mr. Lalonde was well acquainted with those who walked in the corridors of power subsequent to October 25, 1993.

When Mr. Schreiber and Mr. Mulroney entered into their agreement on August 27, 1993, Mr. Schreiber was painfully aware that, despite all the meetings he had attended with Mr. Mulroney during his years as prime minister and despite the access that Mr. Mulroney arranged for him with senior bureaucrats, no proposal for construction of the Bear Head manufacturing facility had ever been approved.

In my view, it defies common sense to think that a man with Mr. Schreiber's political acumen would retain Mr. Mulroney after he resigned as prime minister to achieve an objective – the construction of a manufacturing facility by Bear Head Industries – that had not been achieved during Mr. Mulroney's tenure as prime minister.

The testimony of former prime minister Kim Campbell satisfies me that Mr. Mulroney never attempted to exert any influence on her regarding the Bear Head Project while she held office. This evidence detracts from Mr. Schreiber's assertion that he retained Mr. Mulroney to work on a domestic basis.

I have referred to Mr. Schreiber's political acumen in order to make this observation: if, as he testified, he had retained Mr. Mulroney to lobby the government with the objective of establishing a production facility in Montreal, he had to realize that Mr. Mulroney's usefulness as a domestic lobbyist for Thyssen ended with the election of a Liberal government on October 25, 1993, at least so far as the Bear Head Project was concerned. That is why he retained Mr. Lalonde, a well-known, highly respected Liberal. However, despite the change in government, Mr. Schreiber paid Mr. Mulroney two further instalments, one on December 18, 1993, and the other on December 8, 1994, totalling \$150,000 or \$200,000.

In light of the fact that Mr. Schreiber continued to pay Mr. Mulroney significant sums of cash pursuant to the retainer after the change of government that occurred on October 25, 1993, when Mr. Mulroney's usefulness as a lobbyist had come to an end, I am unable to accept Mr. Schreiber's evidence that he retained Mr. Mulroney to lobby government domestically. The payments lend credence, in my opinion, to Mr. Mulroney's assertion that the retainer was international in scope.

Mr. Schreiber testified that, given Mr. Mulroney's status and connections, he was an influential person even after he left the office of prime minister. Mr. Schreiber was well aware of Mr. Mulroney's abilities to work on an international basis. He gave great credit to Mr. Mulroney for work he did that assisted in the reunification of Germany – an international task of major proportions. At the time of the Mirabel meeting, Thyssen was advancing with the Government of Canada the concept of producing vehicles in Canada to be sold internationally. That was the testimony of Mr. Alford, the vice-president of corporate affairs of Bear Head Industries at the relevant time. Mr. Alford also testified that, in his position with Bear Head Industries, he would have known if Mr. Mulroney was active domestically.

I note that neither Mr. Alford nor Mr. Lalonde was aware of any work being done by Mr. Mulroney, either domestically or internationally. I believe the reason they never heard of Mr. Mulroney doing work domestically is that Mr. Mulroney was not retained to do so. In terms of the international market, Mr. Alford agreed with Mr. Roitenberg's suggestion that, if someone had been hired for the purpose of promoting the company and its efforts through the international market, it would have been done through Mr. Jürgen Massmann, the president of Bear Head Industries, and that he (Mr. Alford) would not necessarily have been made aware of that fact.

It is clear from the evidence before me that Thyssen, a German corporation with a long history going back to the 19th century, wanted to obtain assistance from the Government of Canada in establishing a manufacturing facility and in using Canada as a springboard to gain access to an international market that was, for historical and political reasons since the Second World War, not available to it in terms of selling military vehicles produced in Germany.

Having heard the evidence of Ms. Campbell, I am satisfied that Mr. Mulroney did nothing whatsoever by way of applying pressure or attempting to influence her respecting the promotion or approval of the Bear Head Project. Similarly, on the basis of the evidence of others I heard who served in government as politicians or bureaucrats during and after Mr. Mulroney's tenure as prime minister, I am satisfied that Mr. Mulroney did nothing by way of promoting Thyssen or its objectives domestically after leaving office.

I accept Mr. Mulroney's evidence that the retainer he received from Mr. Schreiber was international in scope, not domestic. Some of the reasons I have cited above for rejecting Mr. Schreiber's evidence tend to support the position taken by Mr. Mulroney as to the international nature of the agreement.

As noted below, I am not able to find that any services were actually provided by Mr. Mulroney for the monies paid to him by Mr. Schreiber. That, however, does not detract from Mr. Mulroney's position that the agreement into which he entered with Mr. Schreiber on August 27, 1993, was international, as opposed to domestic, in scope.

FINDINGS

Based on all the evidence, it is reasonable to conclude that Mr. Schreiber would have wanted to retain someone of Mr. Mulroney's stature on the international stage to promote the sale, in an international market, of military vehicles produced by Thyssen through Bear Head in Canada.

In answer to Questions 4 and 5 of the Terms of Reference, based on the evidence as a whole, I find that Mr. Mulroney entered into an agreement with Mr. Schreiber while he was still sitting as a member of parliament. I find that the agreement was made on August 27, 1993, at the hotel at Mirabel Airport near Montreal. Further, I find that, pursuant to that agreement, Mr. Schreiber retained the services of Mr. Mulroney to promote the sale in the international market of military vehicles produced by Thyssen.

QUESTION 6

6. *What payments were made, when and how and why?*

There is absolutely no doubt that, over a period of something less than one-and-a-half years, Mr. Schreiber paid Mr. Mulroney a considerable amount of money.

I will now proceed to analyze the evidence touching on the payment of money by Mr. Schreiber to Mr. Mulroney. I do not intend to reiterate the evidence I review comprehensively elsewhere in this Report, particularly in Chapter 7, but I will make reference to some of that evidence here.

There is no disagreement between Mr. Schreiber and Mr. Mulroney that, on three separate occasions following the resignation of Mr. Mulroney as prime minister, they met and that, on each of those occasions, Mr. Schreiber gave Mr. Mulroney an envelope containing cash. They also agree that the cash given by Mr. Schreiber consisted of \$1,000 bills in Canadian currency.

The three meetings where the cash was paid took place at three separate locations. The first meeting occurred in a suite at a hotel at Mirabel Airport near Montreal on August 27, 1993. That date was approximately two months subsequent to Mr. Mulroney's resigning as prime minister, but, I note, while Mr. Mulroney was still sitting as a member of parliament. Mr. Schreiber and Mr. Mulroney were alone at this first meeting.

The second meeting occurred in a room where coffee is served at the Queen Elizabeth Hotel in Montreal on Saturday, December 18, 1993. When this meeting occurred, other persons were present in the room, but Mr. Schreiber handed the cash over to Mr. Mulroney concealed in an envelope.

The third meeting took place in a suite at the Pierre Hotel in New York City on December 8, 1994. In addition to Mr. Schreiber and Mr. Mulroney, Mr. Doucet was

present when the cash, again concealed in an envelope, was handed by Mr. Schreiber to Mr. Mulroney. Mr. Doucet said he did not know what was in the envelope, nor was he told about the contents by either Mr. Schreiber or Mr. Mulroney.

The evidence of Mr. Schreiber and Mr. Mulroney diverges on the issue of the amount of cash Mr. Schreiber paid to Mr. Mulroney. Mr. Schreiber's evidence is that he paid Mr. Mulroney a total of \$300,000, by three equal instalments of \$100,000. According to Mr. Mulroney, the cash payments he received from Mr. Schreiber totalled \$225,000, paid by three equal instalments of \$75,000.

As I have noted elsewhere in this Report, there is not one single document where any one of these cash transactions is disclosed or recorded. None of the cash was deposited in a bank or other financial institution in a manner that would create a paper or electronic record of the deposit. Mr. Mulroney initially placed the cash he received at the Mirabel Airport in a strong box at the cottage he was renting at Estérel, and later moved it to a safe in his home in Montreal. Mr. Mulroney also placed the cash he received at the Queen Elizabeth Hotel in the safe in his home in Montreal. He put the cash Mr. Schreiber gave him at the Pierre Hotel in New York in a safety deposit box in a bank in that city, but there was no record of the deposit.

There is a dearth of credible evidence before me that would, in any way, tend to support the position of either Mr. Schreiber or Mr. Mulroney respecting the amount of cash that changed hands. There is evidence that, within a relatively short period before each of the three occasions when Mr. Schreiber provided cash to Mr. Mulroney, Mr. Schreiber withdrew \$100,000 in Canadian funds from an account he had established at a bank in Switzerland.

I have considered the evidence of Mr. Lavoie, the spokesperson for Mr. Mulroney, who told at least one journalist that the amount paid was \$300,000, but then retracted that statement, saying that the amount paid was substantially less than \$300,000. I have also considered the mandate document prepared by Mr. Doucet, which indicates that the amount of the retainer was neither \$225,000 nor \$300,000 but \$250,000. In addition, I have considered the fact that Mr. Mulroney declared \$225,000 in income when he made his voluntary tax disclosure several years after the transactions took place.

One of the consequences of failing to create a paper trail when cash is changing hands, something that could easily have been done by either Mr. Schreiber or Mr. Mulroney, is that there is no record to substantiate the fact that the transaction or transactions have occurred.

I have considered very carefully the evidence with respect to the amount of cash paid by Mr. Schreiber to Mr. Mulroney. I have decided not to accept the evidence of either of them unless there is independent, credible evidence to support one of the two positions taken. In my view, no such evidence exists. I am therefore left in the position of not being able to say what amount of money Mr. Schreiber paid to Mr. Mulroney.

Having said that, whether the sum paid was \$225,000, \$300,000, or another sum altogether is irrelevant to my conclusion: the acceptance by Mr. Mulroney of the payments was inappropriate, a conclusion I explain in detail in Chapter 9.

FINDINGS

Mr. Schreiber made three payments to Mr. Mulroney. The payments were made in cash that was concealed in envelopes and consisted of \$1,000 bills in Canadian currency. I find that Mr. Mulroney was paid at least \$225,000 in \$1,000 bills. On the basis of the evidence before me, or, perhaps, more appropriately on the basis of the dearth of credible evidence before me, it is impossible for me to draw a conclusion as to the total amount paid by Mr. Schreiber to Mr. Mulroney.

I find that the payments were made on the following dates and at the following places:

- August 27, 1993 – a suite at the hotel at Mirabel Airport near Montreal;
- December 18, 1993 – a room at the Queen Elizabeth Hotel, Montreal, where coffee is served; and
- December 8, 1994 – a suite at the Pierre Hotel in New York City.

The payments were made pursuant to a retainer agreement entered into by Mr. Schreiber and Mr. Mulroney at the hotel at Mirabel Airport on August 27, 1993. The payments were made in cash as part of a scheme on the part of both Mr. Schreiber and Mr. Mulroney to avoid creating a paper trail, thereby concealing the fact that a relationship existed between them which included the payment of money.

QUESTION 8

8. *What services, if any, were rendered in return for the payments?*

My task is to determine whether Mr. Mulroney rendered any services in return for the money Mr. Schreiber paid to him. If I am able to determine, on the basis of evidence on which I can rely, that services were in fact rendered, then I am to ascertain what those services were.

Both Mr. Schreiber and Mr. Mulroney addressed the issue raised by Question 8. In addition, I heard evidence from Mr. Doucet, Mr. Kaplan, and Mr. Lavoie regarding services rendered. I also had before me documents created by Mr. Doucet, all of which were created subsequent to the events referred to in those documents. The documents to which I refer are the notes Mr. Doucet composed either as *aide-mémoires* or following meetings he had with Mr. Schreiber as well as what has been referred to as “the mandate document.”

Mr. Mulroney’s position is that, pursuant to the mandate he received from Mr. Schreiber, he developed a concept for the sale of military vehicles produced

by Thyssen to the United Nations. These vehicles, according to Mr. Mulroney's concept, would be sold to the United Nations for peacekeeping purposes and located in various countries either in or near to places where they might be required.

Mr. Mulroney's concept included an approach to the secretary-general of the United Nations for his approval and support before placing the idea before the Security Council. First, however, Mr. Mulroney said he believed it desirable to approach the leaders of the United States, the United Kingdom, France, China, and Russia. Those countries each occupy a permanent seat on the Security Council of the United Nations. They are referred to in this Report as the P5.

It was apparent to me that Mr. Mulroney is very familiar with the operations and procedures of the United Nations. In fact, he testified that he had been sounded out as a potential candidate for the office of secretary-general of that organization himself. Mr. Mulroney testified that he would not even consider approaching the secretary-general with his concept until he was assured of the full support of all members of the P5. Each member of the P5 had a veto with respect to any resolution brought before the Security Council. If any member of the P5 vetoed a resolution, that veto would bring the resolution to an abrupt and final halt.

In his testimony before me, Mr. Mulroney stated that, with all the foregoing in mind, he first visited the leaders of China, France, and Russia. He also testified about speaking to two prominent Americans, James Baker and Caspar Weinberger. The representative from France to whom Mr. Mulroney says he spoke was François Mitterrand, the president of France, and in Russia it was Boris Yeltsin, the president of Russia.

For different reasons, none of the people to whom Mr. Mulroney says he spoke was available to the Commission. Mr. Mitterrand and Mr. Yeltsin are dead, as is Mr. Weinberger. The Chinese leaders are inaccessible. Although Mr. Mulroney asserts he spoke to Mr. Baker, he was unable to remember any discussion with him about the procurement of military vehicles by the United Nations.

I must view with skepticism Mr. Mulroney's claim to have spoken to the leaders referred to in the preceding paragraphs. I have said elsewhere in this chapter that I am unable to conclude that Mr. Mulroney spoke to the Chinese leaders, as asserted by him. The evidence of Mr. Bild, a former Canadian ambassador to China, caused me to seriously question the credibility of Mr. Mulroney's evidence respecting his meeting with and talking to the Chinese leaders on Mr. Schreiber's behalf.

It is troubling that, in the one instance where there is independent, credible evidence with respect to the discussions Mr. Mulroney had with various leaders of the P5 countries, the evidence detracts from Mr. Mulroney's credibility.

I note as well that Mr. Mulroney testified that he expended approximately \$45,000 by way of expenses in the course of his international travels on behalf of Thyssen pursuant to his mandate. However, Mr. Mulroney was not able to provide

any documents to support the expenses he claims to have incurred. When he made his voluntary tax disclosure, he did not claim any expenses because he had no documents to support those expenses. Mr. Mulroney testified that he disposed of the records of expenses in the ordinary course of business. That evidence is also somewhat troubling because we know that Mr. Mulroney made no reference to either the income generated or the expenses incurred as a result of his international travels until his voluntary tax disclosure. For his part, Mr. Schreiber denies that Mr. Mulroney's mandate was international in scope. He also refutes the claim made by Mr. Mulroney that he (Mr. Mulroney) spoke to various international leaders. Mr. Schreiber denies that Mr. Mulroney referred to his first trip to China, which took place in October 1993, when the two men met at the Queen Elizabeth Hotel in Montreal on December 18 of that same year. In addition, Mr. Schreiber denies that Mr. Mulroney provided him with a full report as to his efforts internationally when they met at the Pierre Hotel in New York on December 8, 1994.

Mr. Mulroney's evidence as to his providing a full report to Mr. Schreiber at the Pierre Hotel is supported by Mr. Doucet, who was present at that meeting.

I observe that the meetings Mr. Mulroney had with the various leaders all seem to coincide with trips he took for other business purposes or for personal reasons such as vacations. For example, Mr. Mulroney travelled to China with other clients in a corporate jet owned by one of those clients in October 1993. He was on vacation in Russia when he says he met with Mr. Yeltsin. And his meeting in Paris with President Mitterrand can be fairly described as pure happenstance. Mr. Mulroney testified about receiving a call from Mr. Mitterrand while he was in Paris with his wife and that, as a result of that call, they visited with President Mitterrand and his wife at the Élysée palace during the course of an evening.

Throughout his evidence covering meetings he said he had with various world leaders, Mr. Mulroney testified about being the beneficiary of the hospitality of those leaders. Despite that hospitality, Mr. Mulroney was not able to produce any correspondence forwarded to those leaders thanking them for their hospitality. I know from other evidence before me that Mr. Mulroney characteristically wrote letters of thanks to people who had assisted or supported him in one way or another. It seemed to me to be uncharacteristic of Mr. Mulroney not to have written to any of the world leaders to whom he says he spoke, confirming the discussions about his concept of selling Thyssen-produced military vehicles to the United Nations and thanking them for their hospitality.

During the course of the Inquiry, I also heard evidence about Mr. Mulroney's involvement with respect to a pasta business that Mr. Schreiber was attempting to establish in Canada. I have concluded that, whatever Mr. Mulroney did respecting Mr. Schreiber's pasta business, it was not done as part of the mandate he received from Mr. Schreiber on August 27, 1993. Any work done by Mr. Mulroney in respect

of the pasta business was done on behalf of his friend and former colleague Mr. MacKay, as well as a friend of Mr. MacKay's who was involved with Mr. Schreiber in the pasta business.

Having considered all the evidence that in any way touches on the services provided by Mr. Mulroney in return for the cash paid to him by Mr. Schreiber, it seems to me that I am left only with the evidence of Mr. Mulroney, except, as noted above, for the discussions he says he had with the Chinese leaders. In that instance, as already noted, I have serious reservations, because of Mr. Bild's evidence, about the credibility of Mr. Mulroney's testimony.

On the issue of what services Mr. Mulroney provided in return for the payments from Mr. Schreiber, I have grave concerns about the total absence of any documentary evidence that might tend to support Mr. Mulroney's testimony.

If expenses had been incurred that were related to the mandate Mr. Mulroney received from Mr. Schreiber, one would reasonably expect to see a claim for those expenses supported by receipts or statements of account for travel, meals, and accommodation. There was no such claim. No such documentation was placed in evidence before me. Bearing in mind that concealing the fact they were doing business with each other seemed to be of major importance to both Mr. Schreiber and Mr. Mulroney, the failure of either of them to document anything related to that business ought not to come as any surprise.

FINDINGS

Although Mr. Mulroney may have met with Messrs. Mitterrand, Yeltsin, Baker, and Weinberger, the evidence falls short of convincing me that he had any discussions with them related to the promotion of a concept involving the purchase by the United Nations of military vehicles produced by Thyssen. I have also said I am unable to conclude that Mr. Mulroney spoke to the Chinese leaders as asserted by him. There is an absence of independent evidence that Mr. Mulroney provided any services pursuant to the international mandate that I have found was the reason for the payment of monies he received from Mr. Schreiber.

Given the above, I am not able to find that any services were ever provided by Mr. Mulroney for the monies paid to him by Mr. Schreiber.

NOTES

- 1 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4051.
- 2 Exhibit P-20.
- 3 Exhibit P-7(3), tab 21, para. 15; Exhibit P-8, p. 3.
- 4 Exhibit P-7 (3), tab 21, para. 16.
- 5 Testimony of Mr. Karlheinz Schreiber, Transcript, May 7, 2009, p. 3296.
- 6 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3524.
- 7 Exhibit P-25, tab 12.
- 8 Exhibit P-25, tab 13.
- 9 Exhibit P-25, tab 14.
- 10 Exhibit P-25, Index.
- 11 Exhibit P-21, tab 12.
- 12 Exhibit P-18, tab 17.
- 13 Exhibit P-56, Interview of the Honourable Jean Charest, March 9, 2009. See also Exhibit P-7(1), tab 95, September 9, 1993, memorandum from Helmut Zankl to file. Subject: "Thyssen visit August 26, 1993." states that the Thyssen vehicle has been chosen for NATO member countries for peacekeeping and that NATO countries have an immediate requirement for 2,000 units and an overall requirement of 15,000 units. The document also indicates that worldwide replacement of existing inventories is in excess of 100,000 units.
- 14 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4092.
- 15 *Ibid.*, p. 3548.
- 16 In direct examination, Mr. Mulroney was presented with these documents and they were tendered as exhibits. They were identified as follows:
 - 1 Brochure from Thyssen Henschel "Defence Technology" the 495 Infantry Combat Vehicle. The brochure depicts a light grey vehicle. The United Nations insignia is marked in the drawings of the vehicles. Exhibit P-47 A.
 - 2 Brochure from Thyssen Henschel regarding the TH 495 vehicle and depicting a camouflaged vehicle. Exhibit P-47 B.
 - 3 Document consisting of six pages entitled "Thyssen Project in Canada." Exhibit P-47 C.
 - 4 Copy of the statement of claim naming Bear Head Industries Limited, among others, as plaintiffs against Her Majesty. Exhibit P-47 D.
 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3548–54.
- 17 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3548.
- 18 *Ibid.*, pp. 3554–55.
- 19 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3559; May 15, 2009, p. 4081.
- 20 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3559; May 15, 2009, p. 4082.
- 21 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4103.
- 22 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3556.
- 23 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4098.
- 24 Exhibit P-43, tab 68.
- 25 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3541.
- 26 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4631.
- 27 Exhibit P-25, tab 3.
- 28 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4237.
- 29 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3533.
- 30 *Ibid.*, p. 3533.
- 31 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1832–34.
- 32 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4278–79.
- 33 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 446.
- 34 Exhibit P-35, tab 18.
- 35 Exhibit P-35, tab 17.
- 36 Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, pp. 2755–56, [ENGLISH TRANSLATION], p. 2750.

- 37 Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, p. 2759, [ENGLISH TRANSLATION], p. 2754.
- 38 Exhibit P-7(3), tab 24.
- 39 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 445–46.
- 40 Exhibit P-7(3), tab 23.
- 41 Ibid.,
- 42 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 436.
- 43 Ibid., p. 447.
- 44 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 455.
- 45 Ibid., p. 453.
- 46 Ibid., p. 458.
- 47 Testimony of Mr. Fred Doucet, Transcript, April 27, 2009, pp. 2145–46.
- 48 Exhibit P-35, tab 18.
- 49 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 450–51.
- 50 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4606–07.
- 51 Ibid., p. 4609.
- 52 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, pp. 722–23.
- 53 Exhibit P-21, tab 12.
- 54 Exhibit P-18, tab 18.
- 55 Exhibit P-18, tab 18, point 4(a).
- 56 Exhibit P-7(1), tab 99.
- 57 Exhibit P-18, tab 32.
- 58 Exhibit P-18, tab 38.
- 59 Ibid.
- 60 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4097.
- 61 Ibid.
- 62 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3548.
- 63 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3567–68; May 13, 2009, pp. 3592–93.
- 64 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, pp. 4130–31.
- 65 Ibid., p. 4098.
- 66 Ibid., p. 4099.
- 67 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, p. 724.
- 68 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 588–89.
- 69 Testimony of Mr. Marc Lalonde, Transcript, March 30, 2009, p. 117.
- 70 Exhibit P-44, tab 72.
- 71 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3581.
- 72 Ibid., p. 3580.
- 73 Exhibit P-44, tab 72.
- 74 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3586.
- 75 Ibid., p. 3587.
- 76 Ibid.
- 77 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4331.
- 78 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3591.
- 79 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4143.
- 80 Ibid., pp. 4120–21.
- 81 Testimony of Mr. Fred Bild, Transcript, May 21, 2009, p. 4783.
- 82 Ibid., pp. 4807–08.
- 83 Ibid., p. 4808.
- 84 Ibid., p. 4803.
- 85 Ibid., pp. 4792–93.
- 86 Ibid., p. 4794.
- 87 Ibid., pp. 4804–05.
- 88 Exhibit P-61, tab 4.

- 89 Exhibit P-7(3), tab 28.
- 90 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 547–49.
Mr. Schreiber confirmed that “2710” refers to the hotel room he rented. Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 543, 548.
- 91 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 541–42.
- 92 Ibid., p. 551.
- 93 Ibid., pp. 556–57.
- 94 Ibid., p. 594.
- 95 Ibid.
- 96 Ibid., pp. 594–95.
- 97 Ibid., p. 583.
- 98 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4125.
- 99 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3596.
- 100 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4159.
- 101 Ibid., p. 4126.
- 102 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3597.
- 103 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4128.
- 104 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3600–01.
- 105 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4633.
- 106 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4171.
- 107 Ibid., p. 4148.
- 108 Ibid., p. 4149.
- 109 Ibid., pp. 4155–57.
- 110 Exhibit P-18, tab 35.
- 111 Exhibit P-18, tab 37.
- 112 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 584–85.
- 113 Ibid., p. 592.
- 114 Exhibit P-7(3), tab 21, para. 24.
- 115 Exhibit P-29(1), tab 39.
- 116 Testimony of Mr. Fred Doucet, Transcript, April 27, 2009, pp. 2170–71.
- 117 Ibid., p. 2171.
- 118 Testimony of Mr. Greg Alford, Transcript, April 21, 2009, p. 1478.
- 119 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3625.
- 120 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4602.
- 121 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, pp. 4167–68.
- 122 Ibid., p. 4189.
- 123 Ibid., p. 4190.
- 124 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4358.
- 125 Ibid., p. 4350.
- 126 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3606–07.
- 127 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4333.
- 128 Ibid., pp. 4351–52.
- 129 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4635–37.
- 130 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, pp. 4166–67.
- 131 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 645–46.
- 132 Exhibit P-7(3), tab 21, para. 28.
- 133 Exhibit P-25, tab 14.
- 134 Testimony of Mr. Brian Mulroney, May 19, 2009, Transcript, p. 4370.
- 135 Testimony of Mr. Brian Mulroney, May 13, 2009, Transcript, p. 3728.
- 136 Ibid., p. 3729.
- 137 Exhibit P-51, tabs 23, 24, 28.
- 138 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3758.
- 139 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4311–12. Exhibit P-7(3), tab 32.
- 140 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, p. 765.

- 141 Exhibit P-7(3), tab 21, para. 33.
- 142 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4509.
- 143 Exhibit P-7(4), tabs 22, 26, 38.
- 144 Exhibit P-7(3), tab 17.
- 145 Exhibit P-7(3), tab 21, para. 34.
- 146 Exhibit P-7(4), tab 22.
- 147 Ibid.
- 148 Exhibit P-7(4), tab 26.
- 149 Exhibit P-7(4), tab 24.
- 150 Exhibit P-7(4), tab 26.
- 151 Exhibit P-7(3), tab 21, para. 40.
- 152 Exhibit P-7(4), tab 26.
- 153 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, p. 808.
- 154 Testimony of Mr. Elmer MacKay, Transcript, May 4, 2009, p. 2830.
- 155 Ibid., pp. 2830–31.
- 156 Exhibit P-7(4), tab 38.
- 157 Testimony of Karlheinz Schreiber, Transcript, April 16, 2009, p. 824.
- 158 Exhibit P-7(4), tab 38.
- 159 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4574–77.
- 160 Exhibit P-7(4) tab 26.
- 161 Exhibit P-7(4), tabs 22, 26.
- 162 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4580.
- 163 Exhibit P-7(3), tab 17.
- 164 Exhibit P-7(3), tab 3.
- 165 Exhibit P-29, tab 43.
- 166 Ibid.
- 167 Ibid.
- 168 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 603–04.
- 169 Ibid., pp. 604–05.
- 170 Ibid., pp. 606–07, 623–24.
- 171 Exhibit P-29, tab 44.
- 172 Testimony of Mr. Fred Doucet, Transcript, April 28, 2009, p. 2253.
- 173 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, p. 680; April 17, 2009, pp. 1130–31.
- 174 Testimony of Mr. Fred Doucet, Transcript, April 28, 2009, pp. 2282–83.
- 175 Exhibit P-29, tab 45.
- 176 Ibid.
- 177 Exhibit P-29, tab 42. Mr. Doucet agreed that certain excerpts from *the fifth estate* episode were at the heart of the matter. These excerpts referred to an infusion of \$500,000 into the Britan account and subsequent \$100,000 withdrawals. Testimony of Mr. Fred Doucet, Transcript, April 28, 2009, pp. 2312–19.
- 178 Exhibit P-64, pp. 218–19.
- 179 Exhibit P-29, tab 46.
- 180 Exhibit P-64, p. 220. Further in this regard, Mr. Doucet confirmed that the companies were intended to represent the mandating companies as they were in 1993. Ibid., p. 221.
- 181 Exhibit P-29, tab 46, p. 2.
- 182 Testimony of Mr. Fred Doucet, Transcript, April 28, 2009, pp. 2320–31, 2333–34. Exhibit P-64, pp. 221–22.
- 183 Testimony of Mr. Fred Doucet, Transcript, April 28, 2009, p. 2370.
- 184 Ibid., p. 2344.
- 185 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, p. 738.
- 186 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, pp. 738–39, 741. Exhibit P-8, p. 5.
- 187 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, p. 754.
- 188 Testimony of Mr. Karlheinz Schreiber, Transcript, April 17, 2009, pp. 1146–47.

- 189 Exhibit P-57.
- 190 Exhibit P-44, tab 93.
- 191 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4565.
- 192 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4413.
- 193 Ibid., p. 4410.
- 194 Exhibit P-29(2), tab 47.
- 195 Ibid.
- 196 Ibid.
- 197 Ibid.
- 198 Testimony of Mr. Fred Doucet, Transcript, April 28, 2009, pp. 2351–53.
- 199 Exhibit P-29, tab 47.
- 200 Ibid.
- 201 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, pp. 722–24.
- 202 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4631.
- 203 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, pp. 732–33.
- 204 Exhibit P-29, tab 58.
- 205 Testimony of Mr. Fred Doucet, Transcript, April 27, 2009, p. 2191.
- 206 Exhibit P-29, tab 59.
- 207 Mr. Biro is listed as manager of investor relations for Air Canada on the fax cover sheet.
- 208 Exhibit P-29, tab 59.
- 209 Exhibit P-29, tab 60.
- 210 Ibid.
- 211 Exhibit P-62.
- 212 Exhibit P-62, tabs 3, 11.
- 213 Exhibit P-62, tab 11.
- 214 Ibid.
- 215 In this regard, Mr. Schreiber stated that, in 2004, Mr. Mulroney was working not only for companies on an international level. Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 506–07.
- 216 Exhibit P-62, tab 11.
- 217 Ibid.
- 218 Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, p. 2696.
- 219 Ibid. p. 2689.
- 220 Ibid. p. 2690.
- 221 Exhibit P-25, tabs 15 and 16.
- 222 Exhibit P-25, tab 15.
- 223 Exhibit P-35, tab 14.
- 224 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4644–45.
- 225 Testimony of Mr. Pat MacAdam, Transcript, April 20, 2009, p. 12520
- 226 Exhibit P-25, tab 19.
- 227 Ibid.
- 228 Testimony of Mr. Pat MacAdam, Transcript, April 20, 2009, p. 1254.
- 229 Ibid., pp. 1253–54. Exhibit P-14, tab 4.
- 230 Exhibit P-14, tab 4.
- 231 Testimony of Mr. Pat MacAdam, Transcript, April 20, 2009, p. 1263.

The Source of Funds and What Happened to the Cash

The Terms of Reference direct me to investigate and report on the following questions:

7. *What was the source of the funds for the payments?*
9. *Why were the payments made and accepted in cash?*
10. *What happened to the cash; in particular, if a significant amount of cash was received in the U.S., what happened to that cash?*

Karlheinz Schreiber maintains that on each of three occasions – August 27, 1993, at a hotel in Mirabel, Quebec; December 17 or 18, 1993, at the Queen Elizabeth Hotel in Montreal; and December 8, 1994, at the Pierre Hotel in New York City – he provided \$100,000 in cash to former prime minister Brian Mulroney.* Mr. Mulroney does not take issue with the fact that the transactions occurred on the dates on which they occurred, but he states that the amount on each occasion was \$75,000 cash. This chapter will examine the origins of the cash that was transacted, what became of the cash once in the hands of Mr. Mulroney, and why these payments were made and accepted in cash.

* In Chapter 6, I conclude that the second of these meetings between Mr. Schreiber and Mr. Mulroney took place on Saturday, December 18, 1993, and I will use that date henceforth. Note that all references to money in this chapter are to Canadian funds unless otherwise indicated.

Source of Funds

I will examine first the evidence of Mr. Schreiber and his view as to the source of funds, followed by the evidence of Mr. Mulroney. Finally, I will examine the expert evidence of Steven Whittle, on behalf of Navigant Consulting (Navigant), who reviewed the financial evidence regarding the source of the funds provided to Mr. Mulroney.

Much of the detail in this chapter involves the relatively complicated movement of money resulting from different business transactions through various numbered bank accounts in Switzerland. At the outset, it is important for the reader to know that Navigant did not have access to all the pertinent source documents for the reasons described later in this chapter. In the result, although the evidence adduced through Navigant is suggestive, given its fragmentary nature, it is impossible to present a financial picture that is complete.

Mr. Schreiber's Evidence

While testifying, Mr. Schreiber confirmed what he had written in a letter to the House of Commons Standing Committee on Access to Information, Privacy and Ethics (the Ethics Committee, Paul Szabo, chair) dated March 3, 2008,¹ that, on July 12, 1993, he advised the Swiss Bank Corporation (Swiss Bank, or SBC) in Zurich to open a new sub-account with the code name Britan and to transfer into Britan \$500,000 in Canadian funds from another Swiss Bank sub-account with the code name Frankfurt. Mr. Schreiber indicated in testimony that this transfer could not take place at that time, however, because the funds in the Frankfurt account were being held temporarily in a term deposit.

According to Mr. Schreiber, he gave Mr. Mulroney cash totalling \$300,000 in three equal instalments of \$100,000 on August 27, 1993, on December 18, 1993, and on December 8, 1994. Mr. Schreiber indicated that the cash for these payments came from cash withdrawals from a Swiss bank account with the rubric or code name Britan. Mr. Schreiber testified that he made four withdrawals as follows: \$100,000 on July 27, 1993; \$100,000 on November 3, 1993; \$50,000 on July 21, 1994; and \$50,000 on November 21, 1994. He was questioned by Commission counsel about the time between the four withdrawals from the Britan account and the three dates of payment to Mr. Mulroney. He explained that the gaps occurred because the bank holding the account was located in Zurich and he was residing in Munich. When in Zurich, he would make the withdrawals and, on returning home to Munich, would keep the cash in a safety deposit box until he later travelled to Canada.

However, when further questioned by Robert Houston, counsel for Fred Doucet, about the second payment to Mr. Mulroney, Mr. Schreiber was unable to explain why three separate withdrawals of Canadian funds were made on November 3, 1993: \$100,000 from Britan, \$50,000 from Frankfurt, and \$50,000 from account

no. 18679.1. Mr. Schreiber could not recall what he did with the combined \$100,000 from the Frankfurt and 18679.1 accounts, although he asserted it was the \$100,000 withdrawn from Britan that made its way to Mr. Mulroney.

Mr. Schreiber initially gave evidence that the code name Britan referred to Brian Mulroney and Cape Breton, the proposed location of the original Bear Head Project. However, Guy Pratte, counsel for Mr. Mulroney, examined Mr. Schreiber on a letter that Edward Greenspan, Mr. Schreiber's own lawyer, wrote to the CBC on October 20, 1999,² which denied any connection between Britan and Brian Mulroney. In his testimony, Mr. Schreiber eventually acknowledged that Mr. Greenspan's characterizations in the letter were correct and that the Britan account was set up initially in relation to the Cape Breton Bear Head Project. He also agreed with the suggestion that he instituted a lawsuit against the CBC related to *the fifth estate* airing a program that suggested a link between the Britan account and Mr. Mulroney. Mr. Schreiber went on to say that the Britan account referred to "Breton," because the project was based in Cape Breton. He also confirmed that he gave an interview to lawyer and legal historian William Kaplan on March 6, 2004, in which he stated that "Britan was Breton" and that this statement was truthful.³

Since Mr. Schreiber testified that the account operated under the rubric Frankfurt was the source of funds for the Britan account, it is crucial that I delve into the source of the funds in the Frankfurt account.

In Mr. Schreiber's interview with Commission counsel, he confirmed that International Aircraft Leasing Limited (IAL) account 18679 sub-account no. 41391.0 (Frankfurt) was a Canadian dollar bank account that he controlled. With respect to the funds that flowed into the Frankfurt account, Mr. Schreiber informed Commission counsel during the course of that interview that the funds came from three separate projects undertaken for three manufacturing companies – namely, Airbus Industrie, Messerschmitt-Bölkow-Blohm GmbH (MBB), and Thyssen Industrie. Mr. Schreiber also advised Commission counsel that all the Airbus commissions from sales in Canada and Thailand were transferred first into IAL 18679 sub-account no. 18679.4 and then transferred to various parties. He noted that the "system was to pay 25% to the Frankfurt account."⁴ He further stated that the only money that came into his accounts in U.S. dollars was from Airbus, because Thyssen paid only in deutsche marks or Canadian funds. Mr. Schreiber confirmed before me that the comments he made during his interview with Commission counsel were accurate.

In his letter to the Ethics Committee dated March 3, 2008, Mr. Schreiber wrote that the \$2 million portion of the success fee paid by Thyssen to IAL on October 20, 1988, was divided among a group of people that included Mr. Mulroney; and that the success fee was triggered by the federal government's signing an understanding in principle (UIP) with Thyssen to support the Bear Head Project (see Chapter 4).

Mr. Schreiber wrote that, on November 2, 1988, Frank Moores deposited \$500,000 in a Swiss Bank account with the rubric Frankfurt in relation to the Bear Head Project and Mr. Mulroney. He wrote that Mr. Mulroney would have known that the money was marked for him. Mr. Schreiber also wrote that the \$500,000 “sat dormant” in this bank account over a five-year period from November 1988 to July 1993, when Mr. Mulroney “concocted a way to have the money dispersed to him.”⁵ He stated that the reason such a large sum of money remained in the account was because it was for Mr. Mulroney.

In his testimony before me, Mr. Schreiber maintained that, in 1988, \$500,000 from the UIP commission for the Bear Head Project was deposited into the Frankfurt account and that it remained there until he arranged to have it transferred to the Britan account in 1993. He testified that, other than term deposits, the money remained in the account from 1988 to 1993. However, Mr. Schreiber went on to say that the only reason he had for understanding that Mr. Mulroney was aware the money had been set aside for him was because Mr. Moores had told him (Mr. Schreiber) that this was the case.

According to Mr Kaplan’s notes⁶ of an interview on March 6, 2004, Mr. Schreiber advised him that Thyssen agreed to spend \$500,000 more – which funded the Britan account – on a project on which it had already invested \$10 million. Mr. Schreiber testified that Mr. Kaplan was in error in his note of that interview because Thyssen “had nothing to do with that anymore.”⁷

Mr. Mulroney’s Evidence

In his testimony, Mr. Mulroney had no information as to the source of the money. He denied ever being advised by Mr. Moores that funds were set aside on his behalf, nor did he believe there was any reason that would have been done.

Navigant Evidence

Overview

I retained Navigant, a firm of forensic accountants, and directed Commission counsel to instruct the firm to review, analyze, and trace funds into and out of various bank accounts relating to the activities of Mr. Schreiber. The accountants were to attempt to trace funds used for the payments Mr. Schreiber made to Mr. Mulroney in 1993 and 1994. The Commission received into evidence a report detailing Navigant’s work (Exhibit P-40) and heard testimony from Steven Whitla, a managing director of Navigant’s Ottawa office, who was qualified as an expert in forensic accounting during Commission proceedings.

Navigant based its analysis on a review of information obtained by the Commission and various publicly sourced documents.⁸ In describing the scope of Navigant’s

review, Mr. Whitla explained that he and his colleagues were unable to use documents originating from the Swiss and German authorities that were provided as a result of the Government of Canada's letters of request (LORs), which may have been relevant for their analysis.* That limitation increased their reliance on documents produced by Mr. Schreiber and those acquired from other sources obtained outside the LOR process. In further explanation, Mr. Whitla stated that "[t]he majority of the banking documents that we were able to analyze came from Mr. Schreiber, as part of his productions to the Commission."⁹

Mr. Whitla indicated that Navigant's analysis concentrated on four bank accounts:

- IAL 18679, Britan: account no. 46341.5 (CDN) (Britan);
- IAL 18679, Frankfurt, account no. 41391.0 (CDN) (Frankfurt);
- IAL 18679.4 (USD);
- IAL 18679.1 (CDN).

All four of these bank accounts were identified as being Swiss Bank Corporation–held accounts based in Zurich, Switzerland, with an associated client number that included 18679 IAL.¹⁰

Except for the Britan account, Navigant did not have access to complete bank statements and supporting documents for any of these accounts. Mr. Whitla testified that this restriction made it difficult to identify the source of certain funds in the accounts and to ensure the completeness of the information provided.

Navigant determined that Mr. Schreiber withdrew cash totalling \$300,000 from the Britan account in four separate transactions between July 1993 and November 1994 and that the facts support a strong inference that the original source of the monies withdrawn by Mr. Schreiber from the Britan account came, primarily, from funds received from Airbus.¹¹ According to Navigant, these funds flowed apparently from Airbus through three Swiss Bank Corporation accounts before being transferred into the Britan account. The three accounts referred to by Mr. Whitla were a New York account (account number and holder unknown), account no.18679.4, and the Frankfurt account.

Navigant considered Mr. Schreiber's statements that the source of the money in the Britan account was connected to commission money from Thyssen. According to Mr. Schreiber, a \$500,000 portion of the commission received from Thyssen on the signing of the understanding in principle was deposited into the Frankfurt account

* As I noted in Chapter 2, the governments of Switzerland and Germany imposed strict constraints on the use the Government of Canada could make of documents provided pursuant to the LORs. Commission counsel requested that the Government of Canada seek permission from the governments of Switzerland and Germany to enable the Commission to use the documents. The Government of Switzerland refused Canada's request. The Government of Germany agreed to review the documents requested but did not provide the Government of Canada with a waiver. As a result, neither Navigant nor the Commission was able to use or rely on documents received by the Government of Canada from Switzerland or Germany.

in 1988. There it stayed until 1993, when it was transferred to the Britan account. Navigant's analysis demonstrates that, although \$500,000 of Thyssen's funds were most likely deposited into the Frankfurt account in October 1988, those funds were depleted in the ensuing 15 months, to the point where the balance of the account at January 22, 1990, was \$11,560.¹²

Navigant determined that, although the \$500,000 deposit to the Frankfurt account in October 1988 was likely related to the success fees paid by Thyssen, there were no further deposits to Frankfurt traceable back to Thyssen as the source.¹³

Navigant's analysis revealed no documentary evidence connecting any of the four withdrawals made by Mr. Schreiber from the Britan account to any of the payments made to Mr. Mulroney. It is important to note that Navigant's analysis did not uncover any evidence that would demonstrate that Mr. Mulroney would have been aware of the source of the funds he received. Of the millions of dollars that flowed through the accounts controlled by Mr. Schreiber, no banking records reviewed by Navigant indicated Mr. Mulroney as the recipient of funds.¹⁴

Mr. Whitla further opined that, although it was reasonable to strongly infer that the source of the funds in the Britan account was Airbus related, there was no documentary evidence to corroborate Mr. Schreiber's assertion that the money handed to Mr. Mulroney came from the Britan account.¹⁵

Britan Account

Navigant had access to complete bank statements and supporting documents for the Britan account for the relevant period. The firm made the following notes with respect to this account at page 9 of its report:¹⁶

- The client number associated with the account is 18679 "IAL";
- The account appears to have been established on July 12, 1993;
- The account had a zero balance on July 27, 1993 and the last transaction for which we have information was on January 27, 1995 at which point the account [had] a negative balance of \$186.73;
- The account is a Canadian dollar account; and
- Cash withdrawals from the account appear to be authorized by Mr. Schreiber.

In addition, Navigant confirmed that Mr. Schreiber withdrew cash totalling \$300,000 from the Britan account, consisting of a \$100,000 withdrawal on July 27, 1993 (withdrawn on July 27, although funds not available from term deposit until July 28), another \$100,000 withdrawal on November 3, 1993, and two withdrawals of \$50,000 each on July 21 and November 21, 1994.¹⁷ As stated above, Navigant's analysis revealed no documentary evidence connecting any of these withdrawals to the payments made to Mr. Mulroney. Further, as noted earlier, Navigant's analysis failed to uncover any evidence that would demonstrate that Mr. Mulroney would have been aware of the source of the funds he received.¹⁸

Navigant's analysis revealed that the Britan account was funded exclusively by a \$500,000 transfer from the Frankfurt account and \$13,363 in net investment income. As for the use of these funds, Navigant determined that \$301,555 related to the cash withdrawals from the account, being \$300,000 for the cash withdrawn and \$1,555 for transaction expenses. An additional \$212,000 was subsequently transferred to account no. 62684.3 Britan on December 14, 1994. Mr. Whitla testified that no records or documents from this new account were received by the Commission.¹⁹

Frankfurt Account

As previously noted, Navigant determined that the funds in the Britan account were transferred from the Frankfurt account. The firm then examined the Frankfurt account to determine the origins of the funds that financed this transfer. It concluded that the source of the funds in the Frankfurt account was a "pool of funds" with the following composition:

- (a) 91 percent from seven deposits to the Frankfurt account between March 30, 1992, and May 13, 1993, totalling \$1,460,232 (US\$1,194,710) likely from another SBC account identified as IAL account no. 18679.4;
- (b) 9 percent consisting of a starting balance of \$82,941, a deposit of \$10,000 from an unknown source, and investment income of \$49,605.²⁰

When conducting its review of the Frankfurt account, Navigant had bank statements covering the period from October 1988 to March 1994, which indicated deposits of \$4,733,630 and withdrawals of \$4,729,839. Navigant did not, however, have access to a complete record of supporting documents. It had supporting documents for only \$305,112 of the deposits and \$3,932,547 of the withdrawals and, accordingly, could not always identify the source for deposits or the recipients for all withdrawals.²¹

Navigant traced the flow of funds that moved in and out of the Frankfurt account, inclusive of term deposits, and divided the account activities into three time periods. Mr. Whitla explained during his examination that March 13, 1992, was selected as the starting point for the third and most relevant period of time because the balance in the Frankfurt account had by then dropped to \$82,941 and was therefore insufficient to fund the \$500,000 transfer to the Britan account that occurred on July 28, 1993.²² Navigant noted that seven significant deposits occurred between March 13, 1992, and July 28, 1993.

Mr. Whitla explained that the limited supporting documents made available to Navigant caused the firm some difficulties in documenting a definitive source of those seven deposits to the Frankfurt account. He indicated that, as a result, the firm conducted an analysis allowing it to give an opinion about the source of these seven deposits. Navigant formed the opinion that these deposits, together with 17 prior deposits, to the Frankfurt account support a "strong inference"²³ that all 24 deposits

came from another SBC bank account – no. 18679.4. On page 15 of its report, Navigant provided the following facts to support this opinion:²⁴

- i) Each of 24 deposits made to the Frankfurt account equal approximately 25% of certain US dollar deposits to [IAL account no.18679.4].
- ii) In six instances, Mr. Schreiber's diaries contain references to "Frankfurt", "FRA" or "F" being allocated 25% of a larger sum. In two instances, Mr. Schreiber's diaries contain references suggesting an allocation of 25% of a larger sum (and no accounts are referenced). The larger sum appears to be deposited to [IAL account no. 18679.4] while the 25% amounts appears [sic] to be deposited to the Frankfurt account.
- iii) In 3 of the instances [of the 24 deposits to the Frankfurt account], Mr. Schreiber has provided bank documents which support the 25% pattern.
- iv) In Mr. Schreiber's statement to the Commission, which was adopted in his testimony to the Commission, he stated he would typically transfer 25% of amounts he received from Airbus to the Frankfurt account.²⁵

IAL Account No. 18679.4

Based on Navigant's review of available bank documents related to IAL account no. 18679.4, the accountants made the following notes at page 25 of their report:

- The account is a SBC account located in Zurich;
- The client number associated with the account is 18679 "RUBRIK IAL" or "IAL";
- The account has a zero balance at October 6, 1988;
- The account is a US dollar account; and
- Bank documents available suggest Mr. Schreiber had signing authority over this account.²⁶

Navigant identified deposits totalling US\$21,584,940 to IAL account no. 18679.4 in the period October 13, 1988, to October 20, 1993. It opined that US\$21,412,495 (US\$21,584,940 less \$172,445) of those deposits related to funds received from Airbus from three accounts: Kensington account no. 235.971.021 (US\$5,084,495); IAL account no. 235.972.037 (US\$4,655,000); and an SBC New York account (US\$11,673,000). The amounts from the first two accounts were transferred into IAL account no. 18679.4 prior to June 30, 1991, and match a schedule provided by Mr. Schreiber detailing amounts received by IAL from Airbus during that time period. The amounts from the third account were transferred after June 30, 1991, and were all received in U.S. funds.²⁷

According to Navigant, in most instances, shortly after these funds were deposited to IAL account no. 18679.4, approximately 25 percent of the amounts were subsequently deposited to the Frankfurt account. This pattern was present with respect to all seven of the deposits that formed 91 percent of the Frankfurt account and financed the transfer into the Britan account. The 25 percent pattern is evident both before and after June 30, 1991. This pattern, as well as Mr. Schreiber's confirmation that the only inflow in U.S. dollars was from Airbus commissions, coupled with information regarding the Airbus payments

provided by the Public Prosecutor's Office in Augsburg, Germany, allowed Navigant to draw the strong inference that these amounts were Airbus-related payments.²⁸

Why Cash?

The Terms of Reference direct that I answer the question of why the payments were made and accepted in cash. I should also make clear that I regard the concept of "acceptance of the cash" as including the maintenance of the funds by Mr. Mulroney in cash. Mr. Schreiber and Mr. Mulroney were questioned numerous times about their reasons for making and accepting payments in cash when they each gave evidence before me, particularly in reference to their three meetings and their actions at various times. I will briefly review their evidence as it touches on this issue.

Mr. Schreiber's Evidence

Mr. Schreiber testified that he never thought about paying Mr. Mulroney by cheque or bank draft because the account in which the money was held was not an account on which cheques were drawn. Mr. Schreiber acknowledged, however, in response to a specific question about securing a bank draft, that he "could have asked the bank to do something."²⁹

According to Mr. Schreiber, the existence or absence of a paper trail was "not in his mind" at the time. He further testified: "I hadn't even thought about it. You know, when you say paper trail, as soon as Mr. Mulroney would have provided any services and would have rendered an invoice, there would be a document, and that's the only thing I would care about."³⁰

Mr. Schreiber testified that at no point after the first and before the second cash payment did Mr. Mulroney request a bank draft or a cheque in lieu of the cash payment. Nor did he make such a request at the Queen Elizabeth Hotel when presented with the second payment. Mr. Schreiber also stated that Mr. Mulroney did not hesitate when he first received the cash on August 27, 1993, and he denied telling Mr. Mulroney on that occasion that he was an international businessman who only dealt in cash, as maintained by Mr. Mulroney.

In assessing claims by Mr. Schreiber that he was not concerned to create a paper trail, I find it instructive to review some of his other financial dealings. For example, I heard evidence relating to a number of payments he made by cheque, in the weeks following the Canadian government's signing of the understanding in principle (UIP) with Thyssen to support the Bear Head Project (a signing that released \$2 million, the second half of a \$4 million success fee paid by Thyssen). A series of invoices was submitted to Bitucan Holdings Limited, a corporation of which Mr. Schreiber was the chairman and main shareholder. These invoices were submitted as follows:

- Government Consultants International (GCI) for \$250,000;
- FDCI / Fred Doucet Consulting International for \$90,000;
- Doucet & Associates (for services rendered by Gerald Doucet) for \$90,000;
- Frank and Beth Moores for \$90,000;
- Lemoine Consultants Inc. (Gary Ouellet's company) for \$90,000.

All the invoices were paid in full by cheques issued on November 15, 1988 (see Chapter 4).

An interesting aspect of the paper trail around these transactions is that Mr. Schreiber, on behalf of Bitucan Holdings, in turn invoiced another company with which he may have had some connection, Merkur Handels (based in Liechtenstein), in the amount of \$710,000 – the total amount of the invoices received by Bitucan plus \$100,000.³¹ The invoice, dated October 20, 1988, was labelled for “services rendered regarding your industrial project in Indonesia,” despite the fact that this was the mechanism through which Mr. Schreiber disbursed \$610,000 from the Thyssen success fees. The extra \$100,000 appears to have been for Bitucan Holdings or, more accurately, for Mr. Schreiber.³²

Marc Lalonde, a former Liberal cabinet minister, testified that, for several years, starting in 1986 or 1987, he acted as Mr. Schreiber's legal counsel in relation to commercial matters. From October 1993 to September 1995, Mr. Lalonde advised and assisted Mr. Schreiber on the Thyssen matter (“l'affaire Thyssen”).³³ Mr. Lalonde considered this to be the biggest mandate he had received from Mr. Schreiber. The invoices for Mr. Lalonde's professional services in connection with Thyssen were forwarded, on behalf of his law firm Stikeman Elliott, to Bear Head Industries and, subsequently, to Thyssen / Bear Head Industries. According to Mr. Lalonde, invoices were prepared on the basis of hours spent on the file, and payment was made directly to his firm. Mr. Lalonde believed all accounts were paid by cheque or bank draft. He stated that at no time was there discussion about payment in cash for services rendered. Nor did Mr. Schreiber ever tell him that he was an international businessman dealing in cash.

I heard evidence of at least two other large cash transactions in relation to Thyssen. Mr. Schreiber testified that he made a \$500,000 cash donation to the German Social Democratic Party through Winfried Haastert, a member of Thyssen's board of directors, whom Mr. Schreiber described as the “specialist for special jobs for Thyssen, the political side.”³⁴ He explained that the money came from the success fees he had received from Thyssen on the signing of the UIP with the Government of Canada in September 1988. Mr. Schreiber testified that he neither obtained an invoice from Mr. Haastert nor received a receipt for the donation. He went on to explain: “[W]ell, normally it is by cheque but as soon as it deals with political donations out of business, you may not have receipts at all ...”³⁵ It is notable that Mr. Schreiber claims that the money paid to Mr. Mulroney emanates from those same success fees from Thyssen.

Mr. Schreiber characterized his payments to Mr. Mulroney as a situation in which he was waiting to activate Mr. Mulroney, when the time was right, to use his political contacts to assist in moving the project forward in Quebec.

The second large cash transaction referred to by Mr. Schreiber in his evidence involves the payment of \$500,000 in cash to Gary Ouellet. Navigant indicated in its report that the source of these funds appears to be the UIP commission from Thyssen. According to Mr. Schreiber, GCI was owed 25 percent, or \$1 million, of the \$4 million in commission payments paid by Thyssen. Mr. Schreiber testified that he withdrew \$500,000 in cash on December 5, 1988, which he later provided to Mr. Ouellet (who received the money on behalf of GCI). Mr. Schreiber testified that Mr. Moores, Mr. Ouellet's partner in GCI, asked him to hand the cash over to Mr. Ouellet when he (Mr. Ouellet) was in Europe. As I have noted elsewhere in this Report, both Mr. Moores and Mr. Ouellet are deceased.

It is also of note that, notwithstanding Mr. Schreiber's assertion that he usually conducted business by cheque, Navigant identified millions of dollars of cash withdrawals for which the ultimate use was unknown. Included in these amounts were cash withdrawals between 1987 and 1994 from the IAL accounts, including the Frankfurt and Britan accounts. Navigant totalled these amounts as follows: \$1,356,000 in Canadian funds, Swiss francs 3,702,660, deutsche marks 3,890,000, and French francs 100,000.³⁶

Mr. Mulroney's Evidence

As Mr. Mulroney's counsel, Guy Pratte, finished his examination of his client before the Commission, he posed one final question:

Mr. Mulroney, let me ask you one last question. You have had a chance now to reflect on the events that have brought you here. Let me ask you directly, why did you accept cash payments from Mr. Schreiber, and why did you handle them in the way that you did?³⁷

Mr Mulroney's response sheds little light on the ultimate answer to the query:

Mr. Commissioner, I wish I could say more, but all I can tell you is that what transpired represented a significant error in judgment, one that I deeply regret, and it's one for which I have paid dearly. It would be my hope one day to encounter a Canadian who, in the course of a long and busy life, has not made some error of judgment of some kind. I haven't yet; perhaps I will one day. I am not to be found, unfortunately, with those who can say, at the end of their days, that I have lived a full life that has been error free. My error is publicized. It was threatened by Mr. Schreiber with his blackmail and extortion. I would much rather have it come out the way it has than ever succumb to this kind of threat. So it is one, as I say, Mr. Commissioner, for which I have paid dearly, and I am afraid that at the end of my testimony here I will have very little to add to that.³⁸

Mr. Mulroney had, however, more to add, although he still did not answer the question. He testified further as to how and why he came to accept the funds in cash. He stated that, when Mr. Schreiber handed him the envelope on August 27, 1993, he knew because of its dimension that it did not contain a cheque, but he did not know the amount of money it contained. He said that he hesitated before accepting the envelope and that Mr. Schreiber responded spontaneously that he was an international businessman and he only dealt in cash.

Mr. Mulroney explained the reason he hesitated when Mr. Schreiber handed him the cash was “because this was my first time out after serving as Prime Minister. I had not had this experience before”³⁹ (of being confronted with a cash payment); and he felt it was unusual. Mr. Mulroney did not ask for a cheque, although he stated that it is where “I very much regret not having said ‘[L]ook, I think I can do something for you here, Karlheinz, but I should be paid by cheque.’”⁴⁰ In fact, Mr. Mulroney reiterated in the course of testifying that he had not been paid in cash before or since by anyone other than Mr. Schreiber.

Mr. Mulroney testified that he should have asked and “insisted upon a cheque at the time”;⁴¹ “had I done it we wouldn’t be here today. But I didn’t. And that was the reason that I indicated that while nothing was illegal, that this kind of transaction, undocumented to that extent, as it is, could give rise to legitimate suspicions by reasonable people.”⁴² Mr. Mulroney confirmed that he would have accepted a cheque had he been given one. According to him, it would have made “all the difference in the world.”⁴³

Mr. Mulroney did not recall being bothered or preoccupied by the cash payment afterward and said that he

wasn’t traumatized at the moment by it. I thought it was unconventional, but clearly it is – it is perfectly legal to deal in Canadian tender. He asked me – he asked me to do work for him. He was going to pay me in Canadian dollars, and I did the work. I knew that it was unconventional. That’s why I hesitated.⁴⁴

It is conceivable that one’s personal circumstances, including one’s poor financial circumstances, may contribute to clouding one’s judgment in such an instance. Mr. Mulroney was asked about his personal financial circumstances at the time. Mr. Kaplan testified that, on June 4, 1998, Mr. Mulroney told him: “[W]hen I first started out,” after leaving office, “I needed money quite badly.”⁴⁵ Mr. Mulroney testified that what he was conveying to Mr. Kaplan was that he had “a lot less money coming out of office” than when he entered office. Mr. Mulroney had some doubts that he made the remarks Mr. Kaplan cited, because “it would certainly be an inadvertent description of my situation,” but he acknowledged that he did not have a “pile of cash.”⁴⁶

One of the reasons Mr. Schreiber gave for bringing cash to the Mirabel meeting, as part of the deal he says was entered into at Harrington Lake, can be explained by his own words, “I understood he [Mr. Mulroney] needed badly the money.”⁴⁸ In a similar vein, Luc Lavoie, Mr. Mulroney’s long-time public relations adviser, was questioned about a November 21, 2007, article in which he was quoted as stating that, when Mr. Mulroney “left politics in 1993, he had money pressures: He was the head of a young family with certain lifestyle expectations – and ‘not a rich man.’”⁴⁹ In his testimony, Mr. Lavoie confirmed this statement, saying that he was not “misquoted” in the news story. Further, he confirmed that he advised reporters of these “money pressures”; he had gleaned the information from an early draft of Mr. Mulroney’s memoirs, although it was cut from the final version.⁴⁹

As we know, the two subsequent payments made by Mr. Schreiber were in cash. Mr. Mulroney stated that he did not expect that subsequent retainers would be in cash, even though he claimed that Mr. Schreiber told him at the Mirabel meeting that he was an international businessman who dealt in cash.

Mr. Mulroney acknowledged that, within the 16-month period between the first and the third payment, it did not occur to him to put the money in a bank to create a paper trail. He explained that he did not make a “strategic determination” to maintain the cash payments as a cash deal.⁵⁰ When asked why he did not put the money in Cansult, his international consulting company, or in a bank in an effort to create transparency, Mr. Mulroney testified that he didn’t place the funds through Cansult because he wasn’t thinking that way at the time. He said he had commenced this transaction one way and simply kept it going in the same fashion.

I have some difficulty accepting this area of the evidence. Absent evidence of an agreement to make this payment a cash transaction, it is difficult to ascertain why someone would have accepted cash on the initial occurrence beyond opining that cash was the fashion in which funds were presented. However, once we move beyond the initial payment in cash, about which Mr. Mulroney states he had some hesitation, I wonder why he did not request that subsequent payments be by cheque. If confronting the issue with Mr. Schreiber made Mr. Mulroney feel uncomfortable for whatever reason, why did he not create his own paper trail by depositing the cash at a bank or other financial institution, or by issuing a receipt to Mr. Schreiber for the money? Why did he not use Cansult for the transaction, when international consulting was the very purpose for which it was created? At one point, Mr. Mulroney offered lack of support staff as part of his reason for not dealing with the money in a more conventional manner. It was unclear whether he meant a lack of staff in August 1993, before his practice was up and running, or in December 1993, because the meeting took place on a Saturday.

It matters not to me whether Mr. Mulroney was referring to August or December because, as already noted in this Report, I remain unimpressed with the excuse in either event.

In Chapter 8, I discuss the issue of the reporting of the funds. The manner in which the money was reported to the taxation authorities has some impact on my consideration of the question of why the money was accepted and maintained in cash. In my view, the manner in which the report was made supports my conclusion that the objective was to conceal the business and financial dealings and the payments.

What Happened to the Money?

In Chapter 6, I concluded that Mr. Mulroney was paid at least \$225,000 in \$1,000 bills. I also concluded that, on the basis of the evidence before me, or, perhaps more appropriately on the basis of the dearth of credible evidence before me, it was impossible for me to draw a conclusion as to the total amount paid by Mr. Schreiber to Mr. Mulroney. Nonetheless, I am directed by Question 10 of the Terms of Reference to find what happened to the cash paid to Mr. Mulroney. I turn now to review the evidence relevant to this issue.

The only evidence of note on this issue comes from Mr. Mulroney, either through his testimony or through what he purportedly told others. He testified that, following his family's departure from Harrington Lake, his wife had brought a small safe to their rented cottage at Estérel, Quebec, to store jewellery and important private items and that he placed the first payment in this small safe. Once he had counted the money, he placed the 75 \$1,000 bills in the safe, where it remained "until the house was completed in Montreal." At that point, he stated, "I moved it [the cash] to the safe in Montreal."⁵¹

Mr. Mulroney never deposited the money he received at the Mirabel meeting in a bank account, nor did he advise his accountant of this transaction.

According to Mr. Mulroney, following the meeting on December 18, 1993, at the Queen Elizabeth Hotel, he took the envelope containing the money home and left it there in a safe, along with the money from the first payment less any used to defray expenses. He did not deposit the 75 \$1,000 bills at a bank. Mr. Mulroney indicated that the banks were closed, given that the meeting occurred on a Saturday. He left the money in the safe because "it was a retainer, an advance ... I had no need for it at the time. I didn't construe it as my money until I took it into income and therefore I just – it was left there."⁵²

The third payment occurred on December 8, 1994, at the Pierre Hotel in New York City, where he met with Mr. Schreiber. Later that same afternoon, Mr. Mulroney went to a downtown branch of the Chemical Bank (which later became JPMorgan Chase), on whose international advisory board he served as a director at the time, and, he stated, "deposited what I had been given in a safety deposit box I held in that bank."⁵³

According to a letter of January 28, 2008, from Michael Lipsitz, general counsel, retail banking, JPMorgan Chase Bank, "Mr. Mulroney had on December 8, 1994 a

safe deposit box at Chase's 270 Park Avenue branch in New York, and the box is still open."⁵⁴ The bank's records specify that this safety deposit box was in fact first opened on December 8, 1994.⁵⁵ During his testimony, Mr. Mulroney confirmed that this information was accurate. He acknowledged that the signed one-sentence letter from Mr. Lipsitz, which omits the information as to when the safety deposit box was opened, was prepared because he had asked the bank to comply with the Ethics Committee's request, which was: "Did I have a safety deposit box in New York and so on."⁵⁶

Mr. Mulroney testified that he had begun the process of obtaining a safety deposit box some months earlier because he needed a place to store important documents. He stated that he completed the paperwork for the opening of the safety deposit box that day and put the envelope with its Canadian dollar content inside the safety deposit box. Mr. Mulroney testified that "it was a convenient time to go by and I had no intention of taking this money back to Canada."⁵⁷ The money stayed in the United States.

In summary, Mr. Mulroney testified that the money received at the Pierre Hotel meeting remained in the safety deposit box in New York, and that the money received at both the Mirabel and the Queen Elizabeth meetings remained in a safe in Montreal until he declared it as income, at which point he "disbursed it to members of my immediate and extended family in Canada and in the United States," respectively.⁵⁸ Mr. Mulroney explained that he had at least two, if not three, of his children at school in the United States, and that was what the money in the United States was "principally" used for. Mr. Mulroney testified that he removed the money from the safety deposit box in New York "in increments," starting at the end of the year 2000.⁵⁹ With regard to expenses, Mr. Mulroney explained that approximately \$45,000 of the money located in the safe in their Montreal home was used for expenses, as incurred by him, during the trips he took pursuant to his international mandate on behalf of Mr. Schreiber.

Conclusion

At the outset of this chapter, I set out three questions from my Terms of Reference on which I was to report. What follows are my responses to those questions.

SOURCE OF FUNDS

7. What was the source of the funds for the payments?

The relevant evidence regarding the source of the funds paid by Mr. Schreiber to Mr. Mulroney comes from two sources, Mr. Schreiber and Navigant. I accept Mr. Mulroney's evidence that he had no knowledge as to the source of the funds he received.

Earlier in this chapter, I dealt extensively with the evidence of both Mr. Schreiber and Navigant regarding the source of the funds paid to Mr. Mulroney. In his inimitable manner, on separate occasions, Mr. Schreiber gave distinct, different accounts as to the source of the funds in the Britan account from which he paid Mr. Mulroney. That fact makes it difficult to accept any of Mr. Schreiber's evidence on this issue, which I will not do unless it is supported by other evidence that I find to be credible.

To summarize, Mr. Schreiber told Commission counsel when he was interviewed before testifying that the funds came from three sources comprising MBB, Thyssen, and Airbus. In an interview Mr. Schreiber gave to Mr. Kaplan, he said the funds came from \$500,000 that Thyssen agreed to spend on the Bear Head Project. In his letter to the Ethics Committee of March 3, 2008, Mr. Schreiber said the \$2 million success fee paid by Thyssen to IAL after the understanding in principle was signed in September 1988 was divided among a group of people that included Mr. Moores, who deposited \$500,000 to the Frankfurt account. Mr. Schreiber said the money sat dormant for five years until payment out of it was made to Mr. Mulroney. That cannot be true because, as Mr. Whitla testified, there was only \$11,560 in the account as at January 22, 1990.

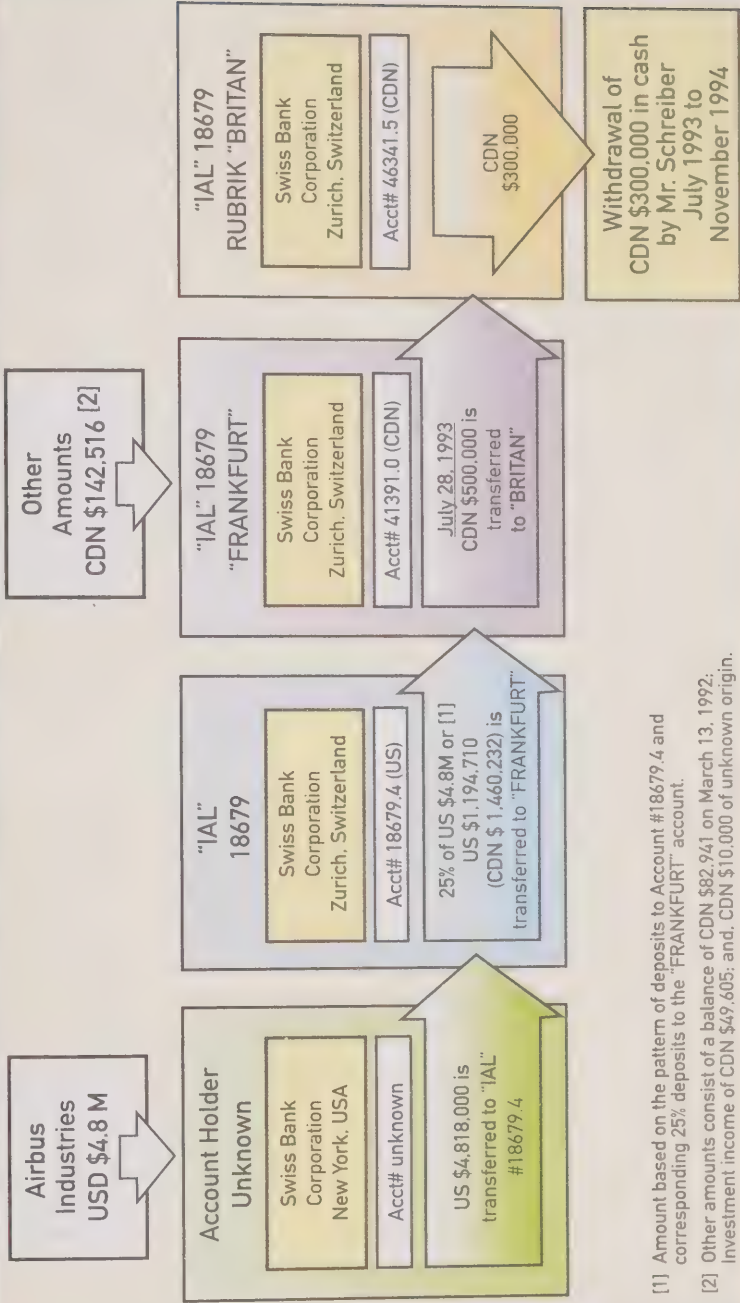
In testifying before me, Mr. Schreiber said the money paid to Mr. Mulroney came from the Britan account. I am prepared to accept Mr. Schreiber's testimony in finding that the money he paid to Mr. Mulroney came from the Britan account. Mr. Schreiber's evidence on the point was not successfully challenged by anyone during the course of his evidence. Moreover, in addition to Mr. Schreiber's evidence, there is circumstantial confirmation in Mr. Whitla's expert evidence and the report by Navigant to support what I view as the correct conclusion – namely, that the money paid to Mr. Mulroney came from the Britan account.

Having heard and read the evidence of Mr. Whitla and Navigant, I have little difficulty in accepting their analysis or in concluding that the funds that made up the Britan account can be traced back to the payments made to IAL by Airbus Industrie. Exhibit P-40 includes the flow chart prepared by Navigant: this chart, reproduced as Figure 7-1, shows the movement of US\$4,818,000 from Airbus Industrie to IAL account no. 18679.4 at the Swiss Bank Corporation in Zurich, Switzerland; the transfer of 25 percent of the monies deposited to IAL account no. 18679.4, being the equivalent of \$1,460,232 in Canadian funds to account no. 41391.0 (Frankfurt) at the same Swiss Bank; and the movement of Can\$500,000 from Frankfurt to account no. 46341.5 (Britan) at the Swiss Bank on July 28, 1993. I note, parenthetically, that Mr. Schreiber testified the only client who paid him in U.S. dollars was Airbus Industrie.

FIGURE 7-1: FUNDS RELATED TO BRITAN ACCOUNT

Chart A

Flow of Funds Related to CDN \$300,000 Cash Withdrawals from the "BRITAN" Account - For the Period March 13, 1992 to November 21, 1994



[1] Amount based on the pattern of deposits to Account #18679.4 and corresponding 25% deposits to the "FRANKFURT" account.
[2] Other amounts consist of a balance of CDN \$82,941 on March 13, 1992; investment income of CDN \$49,605; and, CDN \$10,000 of unknown origin.

Source: Exhibit P-40.

It is my view that the analysis undertaken by Navigant justifies and leads to the strong inference of Airbus as the source of funds, as Mr. Whitla highlighted in his testimony. In coming to this conclusion, I observe that the banking documents available to Navigant, and scrutinized by Mr. Whitla's team, do not allow the possibility that the funds transferred from Frankfurt to Britan were set aside from the success fees paid by Thyssen, as suggested by Mr. Schreiber. Those funds were no longer in Frankfurt as of January 22, 1990. Nor do the banking documents, as analyzed, support the notion that Thyssen provided additional funds to support the formation of Britan, a claim that Mr. Kaplan's notes attribute to Mr. Schreiber but that Mr. Schreiber denies making.

Although I have concluded that the cash paid to Mr. Mulroney by Mr. Schreiber on three separate occasions was withdrawn from the Britan account, aside from the actual withdrawals, the payments of the cash withdrawn from Britan are not documented. Mr. Whitla testified that there was no documentary evidence to connect the funds withdrawn by Mr. Schreiber from the Britan account to the payments made to Mr. Mulroney. Accordingly, there is no evidence to corroborate or refute Mr. Schreiber's claim that the cash withdrawn from Britan ended up in Mr. Mulroney's hands. I repeat, however, that the only reasonable conclusion to draw from the available evidence is that, whatever the amount, Mr. Schreiber paid Mr. Mulroney with cash he withdrew from the Britan account on four separate occasions.

FINDINGS

I find that the funds paid to Mr. Mulroney by Mr. Schreiber came from the Britan account; that the funds in the Britan account came from the Frankfurt account; and that the source of the funds in the Frankfurt account consisted of a portion of the commissions paid to Mr. Schreiber by Airbus Industrie.

For the reasons articulated in Chapter 7, I find that the source of the funds paid by Mr. Schreiber to Mr. Mulroney was Airbus Industrie. I also find that there is no evidence to demonstrate that Mr. Mulroney had any knowledge as to the source of the funds paid to him by Mr. Schreiber. Based on the evidence adduced before me, it is impossible to conclude otherwise.

USE OF CASH

9. *Why were the payments made and accepted in cash?*

Mr. Schreiber's evidence, when analyzed carefully, leads me to conclude that he dealt both in cash and by cheque when transacting business. There is evidence before me indicating that, on some occasions, he paid in cash, and, on others, by cheque. It appears to me, on the basis of the evidence before me, that the method of payment Mr. Schreiber used depended on whether the party or parties with whom he was

dealing wanted to have a transaction that was documented. For example, following the signing of the understanding in principle in September 1988, Mr. Schreiber, through one of his companies, Bitucan, paid all invoices submitted by cheque. When Stikeman Elliott submitted invoices to Mr. Schreiber for legal services provided by Mr. Lalonde, Mr. Schreiber paid by cheque.

Nevertheless, if a party with whom Mr. Schreiber dealt wanted to be paid in cash or did not submit an invoice, the evidence before me is that he paid in cash. One example of a cash payment made by Mr. Schreiber is the \$500,000 cash he gave to Mr. Haastert for the German Social Democratic Party. A second example is the \$500,000 cash Mr. Schreiber gave to Gary Ouellet as part of a fee owed to GCI Consultants by Thyssen. Third, I have the evidence presented by Navigant of many millions of dollars of disbursements made by Mr. Schreiber for which the ultimate use was not identified, including cash withdrawals of \$1.356 million in Canadian funds and millions in other currencies.

I also have the evidence of Mr. Mulroney on the issue of why the payments were made and accepted in cash. At the outset, let me say that I found Mr. Mulroney's evidence on this issue to be troubling at best and, at worst, not worthy of any credence. Mr. Mulroney stated many times during his testimony that he had never knowingly done anything wrong in his life. I have formed the view, based on the evidence before me, that when Mr. Mulroney used the word "wrong" he equated it with the word "illegal."

The basic reason proffered by Mr. Mulroney for accepting and maintaining the monies he received from Mr. Schreiber in cash is that he made a significant error in judgment. I confess to having a considerable problem with that explanation. Mr. Mulroney hesitated before accepting the first instalment in cash. Nonetheless, he accepted the cash. If it was a significant error in judgment that caused him to accept cash on the first occasion, that error could easily have been rectified by Mr. Mulroney. He could have asked Mr. Schreiber to replace the cash with a cheque; or, at the very least, he could have issued an invoice and a receipt for the cash, or he could have deposited it in a bank or other financial institution. In my view, the fact that Mr. Mulroney did nothing of the sort detracts from his credibility on that point.

Even if I were to believe that Mr. Mulroney accepted and maintained the money he received in the first instalment in cash as a result of a significant error in judgment, I am unable to comprehend why Mr. Mulroney, after thinking about what had occurred, would have accepted any further cash, or why he would not have dealt differently with the cash received in the second and third instalments.

In the circumstances, I am driven to conclude that it is impossible that Mr. Mulroney committed the identical significant error in judgment on three separate occasions. It seems to me that, given Mr. Mulroney's education, background, experience, and business acumen, his every instinct would have been, and should have been, to document the transaction in some manner.

As I have said already, “accepting” the payments in cash includes, in my view, “maintaining” the payments in cash. It is clear from Mr. Mulroney’s evidence that, on none of the three occasions when he received cash from Mr. Schreiber, did he deposit the cash to a bank or other financial institution. Had that been done, one or more documents would have been created. However, placing the cash in a safe at his home and a safety deposit box in New York avoided the creation of a document or record.

Mr. Mulroney was and is a sophisticated businessman. He had just completed almost nine years as prime minister of Canada. I am therefore unable to accept as credible that he would repeat the exact same error in judgment as that made on August 27, 1993, by accepting cash from Mr. Schreiber on two subsequent occasions, on December 18, 1993, and on December 8, 1994. In my view, error in judgment cannot excuse conduct that can reasonably be described as questionable.

In his evidence, as noted elsewhere in this Report, Mr. Mulroney addressed his failure to document the transactions he had with Mr. Schreiber. Essentially, Mr. Mulroney, while emphasizing that nothing about the transactions was illegal, acknowledged that an undocumented transaction could give rise to legitimate suspicions by reasonable people, or that reasonable people could conclude, as do I, that something was amiss.

FINDINGS

On the basis of all the evidence I have heard and read, I find that Mr. Schreiber paid Mr. Mulroney in cash; that Mr. Mulroney accepted and thereafter maintained the payments in cash; and that neither Mr. Schreiber nor Mr. Mulroney documented any of the three transactions in any manner whatsoever until 2000, when Mr. Mulroney made his voluntary tax disclosure.

I find that the reason for the payments and acceptance of the payments in cash on the part of both Mr. Schreiber and Mr. Mulroney was to conceal their business and financial dealings and the fact that the cash transactions between them had occurred.

WHAT HAPPENED TO THE CASH?

10. What happened to the cash; in particular, if a significant amount of cash was received in the U.S., what happened to that cash?

Both Mr. Schreiber and Mr. Mulroney acknowledge that Mr. Schreiber paid Mr. Mulroney a sum in cash at the Pierre Hotel in New York City on December 8, 1994. I have no difficulty in finding that a significant amount of cash, either \$75,000 or \$100,000, was paid by Mr. Schreiber to Mr. Mulroney in the United States.

Given that Mr. Mulroney kept no records, I am unable to determine, with specificity, what happened to the cash Mr. Mulroney received from Mr. Schreiber, including the cash that Mr. Mulroney received from Mr. Schreiber at the Pierre Hotel in New York, which Mr. Mulroney placed in a safety deposit box in that city. There was

no documentary evidence to support Mr. Mulroney's assertion that he principally used the money in New York for educating his children who were attending university in the United States, and that the money being held in the safe in his home in Montreal was disbursed among family members in Canada and the United States. Nor was there any documentary evidence to support Mr. Mulroney's claim that, out of the cash he received, he paid approximately \$45,000 for expenses he incurred in performing what he described as the international mandate given to him by Mr. Schreiber.

Basically, what Mr. Mulroney testified was that he spent all the cash he received from Mr. Schreiber.

FINDINGS

I find that Mr. Mulroney spent all of the cash he received, including that received in New York, on himself or family members. I find that the money received in New York and placed in the safety deposit box in New York was spent in the United States.

NOTES

- 1 Exhibit P-7(3), tab 24.
- 2 Ibid., tab 2.
- 3 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, p. 943.
- 4 Exhibit P-8, p. 7.
- 5 Exhibit P-7(3), tab 24.
- 6 Ibid., tab 12.
- 7 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 480.
- 8 Exhibit P-40, p. 3.
- 9 Testimony of Mr. Steven Whitla, Transcript, May 6, 2009, p. 3199.
- 10 Exhibit P-40, pp. 9, 12, 25, 37.
- 11 Ibid., p. 6.
- 12 Testimony of Mr. Steven Whitla, Transcript, May 6, 2009, pp. 3203–04, 3221.
- 13 Ibid., p. 3228.
- 14 Ibid., pp. 3220–23.
- 15 Ibid., pp. 3225, 3226.
- 16 Exhibit P-40, p. 9.
- 17 Exhibit P-40.
- 18 Testimony of Mr. Steven Whitla, Transcript, May 6, 2009, pp. 3189–92, 3221.
- 19 Ibid., pp. 3192–95.
- 20 Exhibit P-40, p. 14. Testimony of Mr. Steven Whitla, Transcript, May 6, 2009, pp. 3195–96.
- 21 Testimony of Mr. Steven Whitla, Transcript, May 6, 2009, pp. 3178–79.
- 22 Ibid., pp. 3207–08.
- 23 Exhibit P-40, p. 15.
- 24 Testimony of Mr. Steven Whitla, Transcript, May 6, 2009, pp. 3211–13, 3217–18.
- 25 Exhibit P-40, p. 15.
- 26 Ibid., p. 25.
- 27 Ibid., pp. 25–27.
- 28 Ibid., p. 26; Exhibit P-41, pp. 18–21.
- 29 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, p. 622.
- 30 Ibid., p. 623.
- 31 Exhibit P-7(1), tab 36.
- 32 Testimony of Karlheinz Schreiber, Transcript, April 17, 2009, pp. 1074–83.

- 33 Testimony of Mr. Marc Lalonde, Transcript, March 30, 2009, pp. 72, 158, [ENGLISH TRANSLATION], pp. 71–72, 152.
- 34 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, pp. 326–28.
- 35 Ibid., pp. 330–31.
- 36 Exhibit P-40, p. 8 and Schedule 17. Testimony of Mr. Steven Whitla, Transcript, May 6, 2009, pp. 3222–23.
- 37 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3781.
- 38 Ibid., p. 3782.
- 39 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4101.
- 40 Ibid., p. 4104.
- 41 Ibid., p. 4116.
- 42 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3560.
- 43 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3946.
- 44 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, pp. 4111–12.
- 45 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1832–34.
- 46 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4278–79.
- 47 Testimony of Mr. Karlheinz Schreiber, Transcript, April 14, 2009, p. 446.
- 48 Exhibit P-35, tab 17, article by Jack Aubry, “Mulroney admits mistake,” *CanWest News Service*, November 21, 2007.
- 49 Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, pp. 2755–56, [ENGLISH TRANSLATION], pp. 2750–51.
- 50 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4154.
- 51 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3562.
- 52 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4149.
- 53 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3628–29.
- 54 Exhibit P-44, tab 120.
- 55 Ibid., tabs 118, 119.
- 56 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4523.
- 57 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, pp. 4183–88.
- 58 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3757.
- 59 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4518.

Disclosure and Reporting

Question 12 of the Commission's Terms of Reference relates to Mr. Mulroney's disclosure and reporting of his dealings with Mr. Schreiber:

12. Was there appropriate disclosure and reporting of the dealings and payments?

This question requires me to consider evidence from multiple sources. I will analyze the documentation related to the dealings and the public statements made by Mr. Mulroney, or on his behalf, and examine his disclosure of the payments to tax authorities. In this chapter I consider and analyze the evidence relating to disclosure. I make my finding on whether the disclosure was appropriate in Chapter 9, where I consider all the Terms of Reference that concern appropriateness.

To provide context, this chapter begins with a brief summary of Mr. Mulroney and Mr. Schreiber's relationship and financial dealings from the early 1980s to 1997. This introduction also provides a useful backdrop against which any public statements and reporting by Mr. Mulroney may be assessed. The particular events and evidence to be considered in this chapter follow.

For the period 1995 to 1997, I will review Mr. Mulroney's lawsuit against the Government of Canada based on the government's allegations in a letter of request (LOR) to Swiss authorities. This section will focus on the aftermath of the LOR, including the content of Mr. Mulroney's sworn testimony on his examination before plea in 1996 and the statements made by his spokesperson Luc Lavoie and his legal counsel during the period under review.

For the period that follows the settlement of the lawsuit, and particularly from 1998 to 2007, I will review:

- Mr. Mulroney's meeting with Mr. Schreiber at the Savoy Hotel in Zurich, Switzerland, in 1998, including the purpose and content of that meeting;
- the context of Mr. Mulroney's correspondence with Mr. Schreiber's counsel, Robert Hladun, in 1999, in which Mr. Mulroney requested a letter from Mr. Schreiber stating that he had received no "compensation" from Mr. Schreiber;
- Mr. Mulroney's connection to the activities of his friend Fred Doucet, who was meeting and recording conversations with Mr. Schreiber in late 1999 and early 2000;
- the context of and basis for Mr. Mulroney's filing of a voluntary disclosure to income tax authorities in early 2000;
- author William Kaplan's research about Mr. Mulroney's dealings and his interviews with Mr. Mulroney, which were conducted over several years; and
- statements made by Mr. Mulroney's spokesperson and friends throughout the 1998–2007 period.

The Relationship Between Mr. Mulroney and Mr. Schreiber

As outlined in detail in Chapter 5, the relationship between Mr. Mulroney and Mr. Schreiber spanned two decades. In describing many aspects of that relationship, Mr. Mulroney and Mr. Schreiber provide contrasting views of the purpose and circumstances of their meetings while Mr. Mulroney was prime minister and of the nature of their relationship through to the end of Mr. Mulroney's term as prime minister.

On June 24, 1993, Mr. Mulroney stepped down as prime minister of Canada but remained a member of parliament until September 8, 1993. By both Mr. Schreiber's and Mr. Mulroney's accounts, the two men entered a commercial agreement in the summer of 1993. As detailed below, the terms of that agreement were undocumented.¹

The Payments

Mr. Schreiber indicated that he paid Mr. Mulroney in instalments of \$100,000 cash, in \$1,000 bills, at each of the meetings at the CP Hotel at Mirabel Airport, the Queen Elizabeth Hotel in Montreal, and the Pierre Hotel in New York City. Mr. Mulroney indicated that the instalments were \$75,000 each. According to both Mr. Mulroney and Mr. Schreiber, at no time was a receipt asked for or provided by either party; at no time was a more transparent method of payment sought or offered by either party; and at no time was the provision or receipt of funds documented by either party. Mr. Mulroney did not deposit the funds into a bank account. Instead, all funds,

except for some expenses paid, remained in cash in either a safe or a safety deposit box. None of the transactions was recorded in the books of Mr. Mulroney's consulting company, Consult. Finally, an invoice was never offered or requested by either party.

Mr. Schreiber testified that Mr. Mulroney rendered no services and provided no progress reports. Conversely, Mr. Mulroney testified that he provided oral reports to Mr. Schreiber, at both the Queen Elizabeth Hotel and the Pierre Hotel meetings, relating to services rendered. Fred Doucet (Mr. Mulroney's former senior adviser and a lobbyist for Mr. Schreiber) confirmed that he was aware of the two oral reports. He stated that he was personally present for the report at the Pierre Hotel meeting, but was aware of the report at the Queen Elizabeth meeting because Mr. Mulroney told him about that.

The Letter of Request and Its Aftermath

On April 17 and 19, 1996, Mr. Mulroney was examined before plea in connection with a lawsuit that he filed against the Government of Canada.² The lawsuit was based on allegations contained in the LOR.³ During his examination, Mr. Mulroney answered questions concerning his relationship with Mr. Schreiber. The fact that the two entered into a commercial relationship, however, was not disclosed. Mr. Mulroney was asked in his testimony before the Commission to explain his responses at the examination before plea.

A brief synopsis of the LOR is provided in Chapter 3. On September 29, 1995, Kimberly Prost, senior counsel of the International Assistance Group for the Minister of Justice of Canada, sent the LOR to the Competent Legal Authority of Switzerland, requesting assistance in an RCMP criminal investigation.

As set out in the introduction of the LOR, the minister of justice and the Attorney General of Canada were seeking information from Switzerland "for use in relation to the investigation and prosecution of alleged violations of Canadian criminal law by Martin Brian MULRONEY and/or Frank MOORES."⁴

On November 14, 1995,⁵ the Department of Justice sent a second letter to the Swiss authorities, stating that the original LOR contained only allegations and requesting that the matter be handled confidentially, given the considerable media interest in the investigation.⁶

Mr. Mulroney testified that he was informed of the existence of the LOR by Mr. Schreiber on November 2, 1995.⁷ Mr. Schreiber informed Mr. Mulroney on the telephone that the LOR had been served upon the directors of the Swiss bank and was becoming common knowledge.

Guy Pratte, Mr. Mulroney's counsel, referred Mr. Mulroney to various passages of the LOR. With reference to the allegation that Mr. Schreiber was provided with commission payments to pay Mr. Mulroney and Frank Moores (one of three principals

in the lobbying firm Government Consultants International (GCI)) to ensure Airbus planes were purchased by Air Canada from Airbus Industrie, Mr. Mulroney testified that this “was a false statement, like everything else in this document.”⁸ Mr. Mulroney was also referred to passages of the LOR regarding:

- the creation of the Devon account to “channel a portion of the funds” to Mr. Mulroney;
- his receiving commission payments as a result of the agreement between International Aircraft Leasing (IAL) and Airbus;
- Mr. Schreiber’s and Mr. Moores’ conspiring with Mr. Mulroney to obtain secret commissions to ensure that Airbus received the contract from Air Canada; and
- the Bear Head, Eurocopter, and Airbus cases, demonstrating “an ongoing scheme” by Messrs. Mulroney, Moores, and Schreiber to “defraud the Canadian Government of millions of dollars of public funds” from the time Mr. Mulroney took office until his resignation.

Mr. Mulroney stated that all the passages were “false.”⁹

Mr. Mulroney testified that, after being informed of the existence of the LOR by Mr. Schreiber, he took steps to deal with the statements contained therein, including the assembly of a legal team, which included Roger Tassé. Mr. Tassé, on behalf of Mr. Mulroney, corresponded with both the minister of justice and the RCMP to address the statements contained in the LOR and to offer Mr. Mulroney’s co-operation in their investigation.¹⁰ Examples of correspondence between Mr. Mulroney’s counsel and the minister of justice, counsel for the Department of Justice, the Solicitor General of Canada, the commissioner of the RCMP, and the lead RCMP investigator were filed as exhibits before this Commission.

In his testimony before the Commission, Mr. Mulroney stated that he instructed Mr. Tassé to “[g]o up there and tell them this: There is not a word of truth, nothing, in this thing [the LOR].” He continued: “I will bring my bank accounts with me, statement of net worth, anything they want, and I will answer any question that they have about me in any area of my life.”¹¹ Mr. Mulroney testified that these attempts were made because the LOR “had the capacity to destroy me, my family, my father’s good name and the legacy of my government.” He indicated that “[w]hat we were trying to do was to pre-empt some of the publicity that could have such a terrible effect ...”

When Mr. Pratte asked how these attempts were received, Mr. Mulroney testified that “they [the RCMP and the lawyers at the Department of Justice] wouldn’t give us the time of day.”¹² Mr. Mulroney stated that, after receiving the responses from the Department of Justice and the RCMP, he decided to take action. He testified that he said

to hell with this, I want you guys to initiate a preemptive action. I am going to sue the Government of Canada and the RCMP, and I am going to establish clearly that this thing is a criminal hoax; that there is no evidence whatsoever to sustain anything that they have said.¹³

The LOR was subsequently leaked to journalist Philip Mathias, who wrote an article that was featured in the November 18, 1995, issue of the *Financial Post*. The article publicly linked Mr. Mulroney's name to the Airbus investigation for the first time.¹⁴ The same day, Mr. Mulroney's spokesperson, Luc Lavoie, organized a press conference in which Mr. Mulroney's lawyers would announce a lawsuit against the federal government.¹⁵ Mr. Mulroney testified that he had advised his lawyers that, "as soon as it came out somewhere in the world," they were to hold a press conference to "openly denounce the government and the RCMP" and indicate that a libel suit had been filed.¹⁶

On Monday, November 20, 1995, Mr. Mulroney filed a lawsuit in Montreal against the Attorney General of Canada, Kimberly Prost, J.P.R. Murray, and Fraser Fiegenwald. Mr. Mulroney claimed \$50 million in general and exemplary damages on the basis of false statements about him in the LOR.¹⁷

EXAMINATION BEFORE PLEA

On April 17 and 19, 1996, an examination before plea pursuant to the *Code of Civil Procedure* of Quebec was conducted. In this examination before plea, which in Canada is unique to Quebec, a defendant has the opportunity to examine a plaintiff before the filing of a defence.¹⁸ The defendant, however, must limit the interrogation to the allegations contained in the statement of claim.¹⁹

Mr. Mulroney confirmed that he swore an oath at the examination before plea to tell the truth, the whole truth, and nothing but the truth – a similar oath to the one he took before the Commission. He also agreed that, if an individual answers a question, it must be answered truthfully. Mr. Mulroney agreed that he was very well represented by legal counsel at the hearing. If his counsel took issue with questions asked, they would and could object, and did at times raise objections.

Mr. Mulroney testified that he was informed that the examination would be exclusively limited to the areas in the statement of claim, and he was advised not to respond to any questions outside that scope but to answer questions truthfully. When asked what he understood of his role as a plaintiff in an examination before plea, Mr. Mulroney stated and, later, confirmed the above-noted explanation of the examination before plea.

When asked by Mr. Pratte what the facts at issue were in the lawsuit giving rise to the examination before plea, Mr. Mulroney stated: "Well, it was a Letter of Request that had been sent by the Government of Canada and the RCMP to Switzerland." He continued, stating that "[i]t was the dealing with the Airbus matter almost entirely and that it occurred while I was Prime Minister of Canada."²⁰

Commission counsel Richard Wolson suggested to Mr. Mulroney that, based on the allegations in the LOR, disclosure of his commercial relationship with Mr. Schreiber at the time of the examination before plea would have "compounded

the poisoned atmosphere” in which he found himself. Mr. Mulroney testified that “it is always difficult to respond to any hypothesis,” but he stated that the LOR came perhaps two-and-a-half years after his arrangement with Mr. Schreiber, therefore making it impossible to anticipate anything.²¹

Mr. Wolson suggested that, if Mr. Mulroney had disclosed the commercial relationship and the details of the arrangement (cash payments in hotel rooms and a coffee bar), it would have “absolutely fuelled the already raging fire of suspicion that was out there.” When asked whether he would doubt that, Mr. Mulroney responded, “I don’t doubt it,” and remarked that, “as you say, that was a hypothetical in the sense that that question was never asked.”²² Mr. Mulroney was pressed on the issue when Mr. Wolson stated: “But I don’t understand why you can’t admit that you simply didn’t tell him for that reason, because it would have just spread like wildfire this poisonous atmosphere that existed.”²³ Mr. Mulroney testified that Mr. Sheppard (Claude-Armand Sheppard, lead counsel for the Attorney General of Canada and Kimberly Prost) had never asked him the question. He did, however, state that he accepted the second part of the statement, relating to the poisonous atmosphere.

Mr. Mulroney confirmed to Mr. Wolson that, at the time of the examination before plea, the legal commercial relationship with Mr. Schreiber existed; he had \$150,000 in his safe in Montreal which Mr. Schreiber had given him; he had \$75,000 in his safety deposit box in New York City which Mr. Schreiber had given him; and, 16 months prior, he had received the last package of thousand-dollar bills from Mr. Schreiber.

Mr. Mulroney agreed with Mr. Wolson’s suggestion that “the examination on discovery [examination before plea] on such a terrible allegation was a very solemn occasion.” Mr. Mulroney agreed with Mr. Wolson that it was “[n]ot a laughing matter, not a matter of anything more than a serious undertaking of any witness to tell it like it is, tell the truth.”²⁴

Mr. Mulroney was referred to an excerpt from William Kaplan’s book *A Secret Trial: Brian Mulroney, Stevie Cameron and the Public Trust* (2004), which included a conversation that took place between Mr. Mulroney and Luc Lavoie (his spokesperson) before entering the courtroom for the examination before plea at the court house. Mr. Kaplan²⁵ reported that Mr. Mulroney turned to Mr. Lavoie and said, “Luc, do you know what [chief government lawyer Claude-Armand] Sheppard’s problem is going to be today?” Mr. Lavoie replied, “No boss.” “He is going to ask me questions and he expects me to answer them,” Mr. Mulroney said.²⁶

Mr. Mulroney testified:

[I]f Mr. Lavoie says it was said, I’m sure it was. It would also have been said in jest. But my recollection of that one was with Mr. Lavoie entering the House of Commons before Question Period, and that’s where I believe that that took place. But if Mr. Lavoie says it was at that occasion as well, then of course – I would have said it, but it would have been in jest, obviously.²⁷

He added, “But as you know, sir, sometimes in these areas of life you get through a lot of it with a sense of humour.”

In his testimony at the examination before plea, Mr. Mulroney discussed the phone call with Mr. Schreiber on November 2, 1995, wherein he learned about the LOR.²⁹ He then asked if he could get a translated version of the LOR. Mr. Mulroney stated at his examination in 1996 that, the next day (November 3, 1995), he was asked to sign a proxy or power of attorney by Mr. Schreiber’s law firm in Switzerland. He did so on the advice of his counsel, he stated, and received a copy of the translated LOR a few hours later.

When asked by Mr. Sheppard if Mr. Mulroney had communicated with Mr. Schreiber after receiving the translation, Mr. Mulroney testified, “Oh, I’m sure I did.” Mr. Mulroney then answered, in response to a more specific question, that they “had a number of conversations” in November 1995.

Mr. Sheppard asked whether Mr. Mulroney, in the phone conversations subsequent to the November 2 call with Mr. Schreiber, discussed with Mr. Schreiber whether he or his companies had been paid commissions by Airbus. Mr. Mulroney responded:

I never knew ... first, prior to this, I had never heard, I never knew and I do not know to this day what arrangements, if any, had been made by Mr. Shreiber [sic] or anyone else in respect of any commercial transaction.

Mr. Sheppard questioned Mr. Mulroney on the fact that, after receiving the translation of the LOR – which contained allegations concerning Mr. Mulroney and Mr. Schreiber – he did not discuss with Mr. Schreiber whether they were true. In response, Mr. Mulroney stated:

Mr. Sheppard, the document said, among other things, this “This investigation is of serious concern to the Government of Canada, as it involves criminal activity on the part of a former Prime Minister.” This is not an allegation, this is a statement of fact where the Government of Canada is judge, jury and executioner.

Mr. Mulroney continued:

And what preoccupied me, inasmuch as I had never heard of the Airbus matter in my life, what preoccupied me were the extraordinary falsehoods and injustices as they involve me. And I wondered with my family and my friends, quite frankly, how in the name of God could this come about? How could this happen in Canada? How can something like this actually take place?

And the fact that Shreiber [sic] may or may not have had any business dealings was not my principal ... my principal preoccupation. I had never had any dealings with him.

In his testimony before the Commission, Mr. Mulroney told Mr. Pratte that “I had never had any dealings with him”²⁹ referred to Airbus and said that that statement reflected the context in which he was being interrogated, which was Airbus.³⁰

Mr. Mulroney was also questioned by Mr. Wolson regarding his testimony that he “had never had any dealings” with Mr. Schreiber. Mr. Mulroney stated that, in making the statement, he “was referring to the thrust, what evolved as the principal thrust of the statement of claim and the context which was established” a page earlier in the examination by Mr. Sheppard.³¹ Mr. Mulroney referred to Mr. Sheppard’s question about phone calls subsequent to November 2, 1995, and to his answer regarding his ignorance of arrangements made by Mr. Schreiber relating to commissions paid by Airbus. After citing this context, Mr. Mulroney remarked that his response to Mr. Sheppard was in reference to Airbus. According to Mr. Mulroney:

[T]he context of the question and the answer, of course, is the allegations in the statement of claim, which as you know with the Airbus matter and the constant references to that which placed for me the question clearly within the context of the allegations relating to Airbus.³²

Relationship with Mr. Schreiber

At the examination before plea, Mr. Mulroney was asked by Mr. Sheppard to describe his relationship with Mr. Schreiber. In his answer, Mr. Mulroney noted that they must have first met in the early 1980s.³³ Mr. Mulroney was asked by Mr. Sheppard to give details on the circumstances in which they met. He answered:

I don’t remember in what connection because three (3) years later or ... three (3) years later at about that time, I ran for the leadership of the Conservative Party. I then became leader of the opposition and Prime Minister, all in rapid succession. And, as you know, you encounter all kinds of people in those activities. I cannot be more specific than that, although I certainly am sure that I met him in the years prior to nineteen eighty-four (1984).³⁴

Mr. Sheppard then asked Mr. Mulroney to describe his relationship with Mr. Schreiber “after.”³⁵ In his testimony before the Commission, Mr. Mulroney stated that “after” referred to his relationship with Mr. Schreiber after 1984.³⁶ Mr. Mulroney responded to Mr. Sheppard:

Mr. Schreiber was a businessman who seemed to be interested in ... in economic development in Canada, and in one project in particular [...] and it’s the one that’s become known as the “Tissen [sic] Project.”³⁷

In his response, Mr. Mulroney expounded on the nature of the Thyssen project and Mr. Schreiber’s involvement with it, stating:

He had a project which dealt with Canadian Exports. He believed – and he was quite knowledgeable about the capacity and the need for Canada to export. He had a project which called for the building of vehicles that would be either sold to the NATO armies or eventually, as time went on, a new vehicle that would be sold to the United Nations Peacekeepers.³⁸

Mr. Wolson suggested to Mr. Mulroney that the topic of NATO and the United Nations was not raised until his meeting with Mr. Schreiber on August 27, 1993, at the Mirabel Airport, when Mr. Schreiber provided him with a pamphlet containing UN insignia. Mr. Mulroney disagreed, stating that Mr. Schreiber raised the UN with him “in the course of the meetings that he and Elmer [MacKay] and Fred Doucet sought with me, as an indication of the opportunities that would exist in the international export market.”³⁹

Mr. Wolson asked Mr. Mulroney whether he in fact met with Messrs. MacKay, Schreiber, or Doucet before he left office and discussed Thyssen with respect to UN peacekeeping. Mr. Mulroney responded, “No, what I am saying is, in the various meetings that took place, this was in the air.” When asked whether there was discussion or commentary on the subject, Mr. Mulroney stated that “there was no formal discussion ... it was just one of the alternatives that I know had been mentioned.” Mr. Mulroney could not say who mentioned it, stating: “I suppose that it was – the only area that I discussed this with was Mr. Doucet and/or Mr. MacKay, Mr. Schreiber possibly – I remember an important meeting with Paul Tellier and Bob Fowler. I am not sure exactly when or where, but it was in that timeframe.”⁴⁰

According to Mr. Mulroney, Mr. Schreiber had referred to NATO and international peacekeeping and the UN before, although “not in a major way,” and he believed it was in reference to Canada’s involvement in the Balkans. Mr. Mulroney stated that the “specifics” were raised when Mr. Schreiber provided him with the brochures.⁴¹

When asked whether he thought it would have been appropriate to disclose that Mr. Schreiber retained his services to act for him internationally when he told Mr. Sheppard about the new vehicle that would be sold to the UN peacekeepers, Mr. Mulroney stated that he was not asked that question. He remarked that he was “clearly instructed” by his lawyers that, when a defendant elects to examine the plaintiff before a plea in Quebec, the defendant is limited to the allegations in the statement of claim and the “responses have to be responsive to that.”⁴²

In this regard, Mr. Wolson said to Mr. Mulroney that his comments regarding Mr. Schreiber and the sale of vehicles to NATO and the UN were not, strictly speaking, within the statement of claim. Mr. Mulroney testified that he was trying to provide an honest answer about his relationship with Mr. Schreiber after he became prime minister and “in a series of statements I am trying to fully describe, to the extent possible, in that limited context, that.” When Mr. Wolson suggested that Mr. Mulroney was not “quite fulsome” in his responses, Mr. Mulroney stated, “I am fulsome, sir ... [a]nd truthful.”⁴³

In his response to Mr. Sheppard’s inquiry about his relationship with Mr. Schreiber after 1984, Mr. Mulroney described the details of the Thyssen project:

This project, when it first came to my attention, was to have been built in Cape Breton. When I was first elected to the House of Commons, I was elected from Central Nova in Nova Scotia, and I had been educated in ... in that area as well. I’d

gone to college there. I was well familiar with the area and unemployment rates that ranged as high as fifty percent (50%).⁴⁴

Mr. Wolson asked Mr. Mulroney to describe the relevance of the above passage to his lawsuit. Mr. Mulroney testified that he was “simply trying to provide the information” in response to Mr. Sheppard’s question about his relationship with Mr. Schreiber after 1984. Mr. Mulroney reiterated that the statement of claim referred to the period from September 17, 1984, to June 25, 1993, which was the time frame within which he was trying to provide information. He stated that, in his response to Mr. Sheppard’s question, he was “[s]imply trying ... to provide some background.”⁴⁵

When describing the details of the Thyssen project to Mr. Sheppard, Mr. Mulroney described the evolution of the project and the fact that it had a large job creation component. He then specified that the technology involved commanded a need for infrastructure funds from either the provincial or the federal government, a point that was of particular interest to Mr. Schreiber.⁴⁶

In his testimony before me, Mr. Mulroney agreed that, in providing an outline of his relationship with Mr. Schreiber while he was prime minister and telling Mr. Sheppard about the Thyssen project, he was trying to stay within the four corners of the claim. Mr. Mulroney stated in this regard that the claim dealt with the period in which he was prime minister.

Mr. Sheppard also asked Mr. Mulroney to describe his relationship with Mr. Schreiber “over the years.”⁴⁷ In his testimony before the Commission, Mr. Mulroney explained that his response to this question from Mr. Sheppard referred to the period when he was in office. Mr. Mulroney’s response to Mr. Sheppard included:

And so Mr. Schreiber was also, as a German Canadian, he was extremely well informed ... extremely well informed on questions such as German reunification which was beginning in the ... after nineteen eighty-nine (1989) to acquire a degree of importance.

And on the infrequent occasions when I would see him on business, when he was promoting the Tissen [sic] Project, he would raise this German reunification issue and speak very knowledgeably about it.

It was something that interested me a great deal, as a question of Canadian foreign policy, and as you may remember, ultimately, when Chancellor Kohl reported to the ... to the Commission of the Bundestag on the ... the achievements of the ... if the realization ... the unification, he particularly thanked the United States, Russia and Canada for our contributions to that objective.

So I was ... I was of course impressed by anyone with good knowledge ... a good knowledge base and the capacity to articulate it. My association ... he was interested in that, he was interested in Canadian exports, and the project that I associated with him was this one that I’ve described to you.⁴⁸

Mr. Mulroney stated in Commission proceedings that the description of his relationship with Mr. Schreiber provided to Mr. Sheppard was accurate. When asked by Mr. Pratte to describe the period to which he was referring when he told Mr. Sheppard that, on “infrequent occasions I would see him [Mr. Schreiber] on business,” Mr. Mulroney testified that he thought the context was the time that he was in office.⁴⁹ While being questioned by Mr. Wolson, Mr. Mulroney confirmed his remarks were “fully accurate” when he said to Mr. Sheppard that he saw Mr. Schreiber on business on infrequent occasions.⁵⁰

As the examination before plea continued, Mr. Sheppard asked Mr. Mulroney where the meetings took place when Mr. Mulroney met with Mr. Schreiber. Mr. Mulroney responded that they took place in his office in Ottawa and may have taken place in other circumstances:

There may have been ... he may have been at a fund-raising dinner or he may have shown up in other circumstances. I ... I mean I can't swear to that, but I have vivid recollections of a few meetings on this project [the Thyssen project] in ... in my office in Ottawa with senior public servants.⁵¹

Mr. Sheppard asked Mr. Mulroney whether Mr. Schreiber was a political contributor, to which Mr. Mulroney replied that he had “no idea.”⁵² When asked by Mr. Sheppard whether he knew Mr. Schreiber as a friend of Franz Josef Strauss, Mr. Mulroney stated he did not, although he subsequently read that Mr. Schreiber was known to Mr. Strauss.⁵³

Before me, Mr. Mulroney agreed that he was again telling Mr. Sheppard about his relationship with Mr. Schreiber while in office and confirmed his response to Mr. Sheppard about the locations of meetings he had with Mr. Schreiber. Mr. Wolson suggested to Mr. Mulroney that he had neglected to mention the meeting at Harrington Lake on June 23, 1993, when he had discussed his meetings with Mr. Schreiber. Mr. Mulroney testified that the Harrington Lake meeting was “a courtesy call to say goodbye ... I wasn't asked to detail the meetings that I had with Mr. Schreiber, I was asked the question to which you referred earlier ... I am trying to flesh it out. I wasn't asked anything about that.”⁵⁴

At the examination before plea, Mr. Sheppard raised the issue of the cancellation of the Bear Head Project with Mr. Mulroney and asked Mr. Mulroney whether it was correct that the project failed “a number of years ago.” Mr. Mulroney stated:

I indicated to you that it tended to graduate, but the original project in Cape Breton was unsuccessful. This document, even the R.C.M.P. acknowledge in their document that when the costs were reported to me in excess of a hundred million dollars (\$100,000,000.00) in infrastructure, I cancelled the project ... the Cape Breton project of Tissen [sic] that Mr. Shreiber [sic] was promoting failed because I cancelled it. My Government cancelled it ... Put it that way. That's more accurate. My Government cancelled it. This is according to ... this same document.⁵⁵

Mr. Mulroney also discussed, in his response to Mr. Sheppard, Mr. Schreiber's attempts to pursue the Thyssen project after it was cancelled:

Subsequently, Mr. ... Mr. Schreiber [sic], a determined, resolved guy, I can remember a meeting with him. By this time, it is now, say, nineteen ninety-one (1991) or nineteen ninety-two (1992).

And at this point in time, the Tissen [sic] project had evolved into one where vehicles would be made for the United Nations Peacekeeping Forces around the world to protect our Peacekeepers.⁵⁶

During Commission proceedings, Mr. Mulroney testified that he believed the experience of Canada in the Balkans "brought the whole United Nations peacekeeping status to a more dramatic fore, as a result of which it became more prominent in discussions that I can remember." He indicated that the notion of vehicles for the UN peacekeeping forces became more prominent in the "last reincarnation" of the project, "as Mr. Schreiber honed and changed his plans" and then moved it geographically.⁵⁷

In his testimony before the Commission, Mr. Mulroney confirmed that he met with Mr. Schreiber on at least three occasions after he left office. When Mr. Sheppard asked Mr. Mulroney, in the examination before plea, whether he maintained contact with Mr. Schreiber after he "ceased being Prime Minister,"⁵⁸ Mr. Mulroney responded:

Well, from time to time, not very often. When he was going through Montreal, he would give me a call. We would have a cup of coffee, I think, once or twice. And he told me that he continued to work on his project, that he was pushing a new government.⁵⁹

In this regard, Mr. Mulroney told Mr. Pratte that his response to Mr. Sheppard's question was "fully" accurate.⁶⁰ He told Mr. Wolson that three meetings did not constitute "very often."⁶¹ Mr. Mulroney agreed that, when he referred to meeting Mr. Schreiber for a cup of coffee "once or twice," he was referring to those instances when he met Mr. Schreiber at the Mirabel and Queen Elizabeth hotels.⁶²

In his testimony at the examination before plea, Mr. Mulroney described the one or two meetings over a "cup of coffee," noting that Mr. Schreiber had discussed his efforts regarding the Thyssen project. Mr. Mulroney stated:

And he told me that he continued to work on his project, that he was pushing a new government.

And he told me that the idea of the project at that point was the same project, but the desirability at the time was to work with the Provincial Government of Quebec and the Federal Government, the new Federal Government, to establish this new project in the east end of Montreal where the jobs were badly required.⁶³

Mr. Wolson suggested to Mr. Mulroney that his meeting with Mr. Schreiber was "more than coffee" and that, although he met Mr. Schreiber at the Mirabel hotel and may have had a cup of coffee, the essence of the meeting was not coffee. Mr. Mulroney replied:

When I went to that Mirabel Hotel, I didn't know – first of all, I was invited to the hotel. I never – I never asked for the meeting. Mr. Schreiber asked for that meeting and the others.

I went to the hotel as a convenience because he was going to Germany, as you know, that night. In fact, the meeting lasted about a half an hour or so because of his schedule. And I went to the hotel to meet with him. I had no idea what was going to transpire there.⁶⁴

Mr. Wolson suggested that Mr. Mulroney knew this much, however, because Mr. Doucet had called to inform him that Mr. Schreiber wanted to speak with him. Mr. Mulroney agreed that he knew from the phone call that Mr. Schreiber was going to offer him international work, but that Mr. Doucet did not specify during the call what the work might entail.

Mr. Wolson suggested to Mr. Mulroney that, when he was testifying at the examination before plea, he knew that the Mirabel meeting had ended in a commercial relationship where he received \$75,000 in \$1,000 bills. Mr. Mulroney agreed. Mr. Wolson then suggested that the essence of the meeting did not have to do with the cup of coffee, but that he entered a commercial relationship with Mr. Schreiber where cash was exchanged in a hotel room; the essence of Mr. Mulroney's attendance at the meeting was for a business purpose. Mr. Mulroney responded:

It might have been the essence of me being there, but it was not in any way the essence of the question. The question that Mr. Sheppard asked me was: 'Did you maintain contact ... with Mr. Schreiber after ...' It was not: Did you have a commercial relationship with him or can you indicate the nature of your commercial relationship, or what have you.⁶⁵

Mr. Wolson asked Mr. Mulroney how Mr. Sheppard would have known about a commercial relationship, and Mr. Mulroney stated:

Well, he was retained to find these things out and I think you will agree, sir, having gone over this, if he had not been jumping around all over the lot – and I say this with respect for him. Had he not been jumping around in such a disjointed manner and followed through, perhaps, as Mr. Kaplan has said, he would have wound up asking the questions and I would have responded fully and truthfully ...⁶⁶

As the exchange continued, Mr. Wolson asked Mr. Mulroney who knew about the commercial relationship and suggested that, in addition to Mr. Mulroney, only Mr. Schreiber and Mr. Doucet did. Mr. Mulroney remarked that Mr. Schreiber testified that he had advised a high-ranking official of Thyssen in Germany. Mr. Wolson pointed out that the high-ranking official in Germany was in Germany and nobody else with knowledge of the commercial relationship was discussing it openly. He asked Mr. Mulroney: "[H]ow in the world would nine lawyers or 900 lawyers know about a commercial business relationship, because you

say if they asked me I would tell them. You see, you are the only one in the room there that knew.” Mr. Mulroney responded:

I was there being subjected to a two-day interrogation, and I am going to answer all questions truthfully. But the questions, first, would have to fall generally speaking within the purview of my Statement of Claim, but more specifically I was not there to say to Mr. Sheppard, or to anyone at the end of their day and a half interrogation, oh, by the way, you forgot to ask me such and such. Why don't you go ahead and do that.⁶⁷

The exchange continued. Mr. Wolson asked Mr. Mulroney whether his position was that, because Mr. Sheppard had asked him about contact with Mr. Schreiber, his answer – that he met Mr. Schreiber for a cup of coffee – sufficed. Mr. Mulroney replied: “It is my evidence that I was familiar with the parameters of the law as explained to me by my lawyers. They said respond truthfully to questions within that purview and do not volunteer any information. You do not have to do that.” Mr. Wolson then asked: “What did having coffee after you were out of office have to do with the four corners of the examination?” Mr. Mulroney stated: “I was simply asked did I maintain contact with Mr. Schreiber, that's all.”⁶⁸

Of note, Mr. Mulroney, in his response to Mr. Sheppard's question about contact with Mr. Schreiber after he ceased being prime minister, discussed Mr. Schreiber's involvement with Marc Lalonde. In particular, Mr. Mulroney discussed Mr. Schreiber's retaining Mr. Lalonde to represent his interests. Mr. Mulroney stated at his examination before plea:

And he told me that he had hired Marc Lalonde to represent his interests before the new Liberal government. And the Honourable ... Lalonde ... I wasn't ...

Q [Mr. Sheppard] – Of Stikeman Elliot [Stikeman Elliott].

A [Mr. Mulroney] – Pardon me?

Q – Of Stikeman Elliot.

A – Of Stikeman Elliot. I wasn't really surprised because the word in Ottawa is that Mr. Shreiber [sic] and Mr. Lalonde had had a ... had had a long relationship in the past. And so he also expressed the dismay with me that my Government had not agreed or could not include the contract that he liked. So he ... he said that he had hired Mr. Lalonde and he hoped that this would give rise to ... to an agreement.⁶⁹

Mr. Mulroney acknowledged that he did not limit his answer to his contact with Mr. Schreiber and actually went beyond that scope by telling Mr. Sheppard about Mr. Schreiber's statements at their meetings.

At this stage, Mr. Mulroney was asked to explain himself with regard to his testimony that his role at the examination before plea did not include volunteering information,⁷⁰ given that he volunteered information about Mr. Lalonde's retainer. Mr. Mulroney indicated that he volunteered the information about the retainer

because it was essential to the point I was making about the answer I was providing because Mr. Lalonde was specifically involved, sir, as I was told, in the relocation of the project to the east end of Montreal. And it was in that context that I mentioned Mr. Lalonde and that's why he had been hired.⁷¹

Further, Mr. Wolson suggested to Mr. Mulroney that his response to Mr. Sheppard involving Mr. Lalonde had nothing to do with the four corners of his case and asked whether he was "just giving information." Mr. Mulroney responded, "No, I'm not entirely," and he stated that he was in the process of answering Mr. Sheppard's question until he was interrupted by Mr. Sheppard, who said "Of Stikeman Elliot[t]."⁷²

Mr. Wolson asked Mr. Mulroney whether, if Mr. Sheppard had not interrupted him, would he have told Mr. Sheppard that he had a legitimate commercial relationship with Mr. Schreiber. Mr. Mulroney responded, "I didn't say that, sir. ... I didn't say that at all." Mr. Mulroney continued:

I'm saying that I'm in the process of answering the question and as I'm answering, I am interrupted by the chief counsel for the government. That's what I'm saying. And in answer to his question I provide this information, which is entirely legitimate.⁷³

The next area of the examination before plea that was raised by Mr. Wolson was a question from Mr. Sheppard of Mr. Mulroney about the location of his meetings with Mr. Schreiber when Mr. Schreiber "passes through Montreal and visits."⁷⁴ Mr. Mulroney answered:

Well, he doesn't pass through Montreal and visit me. He comes ... when he's on his way to Montreal, he called me and asked me and I say perhaps once or twice, if I could come to a cup ... have a cup of coffee with him at a hotel. I think I had one in the Queen Elizabeth Hotel with him ... I had one in the ... coffee bar of the Queen Elizabeth Hotel.⁷⁵

Later, Mr. Sheppard asked Mr. Mulroney if the cup of coffee with Mr. Schreiber at the Queen Elizabeth Hotel occurred in the period subsequent to November 1995.⁷⁶ Mr. Mulroney indicated that it was after he left office, in 1993. He continued:

... and that's when he told me, as I indicated to you, that ... that he was dismayed that my Government had not allowed him to proceed with his desire to build this Tissen [sic] project.

And that's when he told me that he had hired Marc Lalonde to represent him, because he figured that Mr. Lalonde could prevail upon Mr. Chrétien and the Government to have this done in the East end of Montreal. Which, by the way, had they been able to do it, I ... I ... I thought it was a good project, and so I wouldn't have been critical of anything.

He told me he hired Mr. Lalonde to do that, he told me he was contemplating legal action against my Government, that he had hired a prominent law firm in

Ottawa, I think Ian Scott's law firm, very distinguished lawyer, to take action against the ... the bureaucrats in my Government who, he alleged, had frustrated the fact that he was never able to get a deal through. This deal.

That was the kind of conversation we had.⁷⁷

Returning to his earlier point, Mr. Wolson suggested to Mr. Mulroney that, in addition to having a cup of coffee with Mr. Schreiber at the Queen Elizabeth Hotel, he received a cash payment. While Mr. Mulroney agreed with Mr. Wolson, he stated that the question to which he was responding dealt with whether Mr. Schreiber visited him at his office or home when he passed through Montreal. Mr. Mulroney testified:

That's the question. And I'm saying that he doesn't call me, and so on, and we meet in other circumstances.

That, sir, was the question that I was specifically – and that's why I indicated to you earlier, having read and reread this transcript many times, like you, sir, that the context is particularly important there.⁷⁸

Mr. Mulroney contended, during Commission proceedings, that he, through the assistance of his counsel, had “tried to provide all of the information to them [the Government of Canada].” He remarked that he “offered to go to Ottawa, bring every document, answer any question that they wanted about my life, my entire life, and they turned us down flat.”⁷⁹

Mr. Mulroney testified that he was trying to “respond carefully and thoughtfully” to Mr. Sheppard's questions, having been instructed not to volunteer information. According to Mr. Mulroney, had he been asked a question that his counsel deemed “egregious,” and the judge ruled that he had to answer it, he “would have answered any question truthfully and fully, as I would have had the government accepted my invitation to come up in November of 1995 and lay out for them my entire life, financial, contractual and otherwise.”⁸⁰

When Mr. Wolson suggested to Mr. Mulroney that he offered his bank accounts to the government because they would have been “absent any allegation of Airbus,” Mr. Mulroney stated that he offered “much more than that.”⁸¹ He said that he offered to bring all documents and offered to be subjected to interrogation about anything. According to Mr. Mulroney, “Had they asked me at that time ... had they accepted our invitation and asked me at that time, of course I would have responded fully and truthfully.”

Mr. Wolson asked Mr. Mulroney whether he would have volunteered the information that he received cash payments from Mr. Schreiber in hotel rooms. Mr. Mulroney responded, “I would have answered fully every question.” When Mr. Wolson suggested that the authorities would not have known about the commercial relationship, Mr. Mulroney stated that, had they accepted his offer, he “would have volunteered or indicated anything that was helpful.”⁸²

Mr. Wolson then pressed Mr. Mulroney, asking him whether, in telling Mr. Sheppard that he had coffee with Mr. Schreiber twice, he was “being totally fulsome, forthright, telling the whole truth and nothing but the truth.” According to Mr. Mulroney, he was “truthful in answering the specific question.” Mr. Mulroney testified that “[t]he truthful answer to that was yes, I maintained – the untruthful answer would have been no, I did not maintain.” Mr. Mulroney then stated that, if Mr. Sheppard asked whether as a result of the contact with Mr. Schreiber, a business relationship existed, the answer would have been yes; however, the question was never asked.⁸³ When Mr. Wolson suggested to Mr. Mulroney that the question was never asked because nobody other than Mr. Schreiber, Mr. Doucet, and an official in Germany knew of the commercial relationship, Mr. Mulroney testified that “[i]t never came because, as I say, the high-priced talent that had been retained by the government did not ask me the question ... That’s why it never came.”

With reference to the suggestion that he, as a former prime minister of Canada, should have told Mr. Sheppard that he had a legitimate business relationship with Mr. Schreiber, Mr. Mulroney repeated that he was told by his lawyers to “[a]nswer the questions truthfully, do not volunteer information.” Mr. Mulroney continued:

In the circumstances that I have described, in that hostile environment where they have said that I am a criminal, is it your suggestion, sir – may I ask if it would be your suggestion or thought that in those circumstances, after a day and a half or two days of hundreds and hundreds of questions and interrogation, that I had a responsibility to say to Mr. Sheppard: Look, you and your fellows have had a very good go at me here, you have asked me hundreds and hundreds of questions over two days and we are over, the session is over. Mr. Sheppard, why don’t you ask me the following questions? I think you kind of forgot. Let me ask this question and I say to him well no, that’s not the right question, ask me this question and let’s see what I can do.⁸⁴

Mr. Wolson also suggested to Mr. Mulroney that he should have been fulsome and told Mr. Sheppard about the commercial relationship, given that he told Mr. Sheppard that he had met with Mr. Schreiber a couple of times for a cup of coffee and outlined the events at those meetings – including the discussion surrounding Mr. Lalonde’s retainer and Mr. Schreiber’s taking some action. Mr. Mulroney responded that he was in the process of answering whether he maintained contact with Mr. Schreiber, and “[i]t [his response] is going to be honest and ... going to be direct,” when Mr. Sheppard interrupted him and asked him another question to which he had to respond.⁸⁵

It was pointed out to Mr. Mulroney that no interruptions occurred when the issue was canvassed later in the examination before plea, when Mr. Sheppard sought clarification on the details surrounding the meeting at the Queen Elizabeth Hotel. In his response to Mr. Sheppard regarding that meeting, Mr. Mulroney again

provided details about the conversation with Mr. Schreiber, including Mr. Schreiber's expression of dismay that Mr. Mulroney's government had not allowed him to proceed with the Thyssen project; Mr. Schreiber's contemplation of legal action; and Mr. Lalonde's retainer.⁸⁶

On being pressed by Mr. Wolson that the conversation was more detailed and included discussion about Mr. Mulroney's retainer, Mr. Mulroney agreed that it was. He qualified his agreement, however, by stating that he was responding to Mr. Sheppard's question about whether the Queen Elizabeth meeting occurred in the period following November 1995. Mr. Mulroney testified that he corrected Mr. Sheppard by stating that the meeting took place in 1993 rather than in 1995, and, in doing so, he was "being direct and honest with him."⁸⁷ According to Mr. Mulroney, his response was

... in regard to precisely what he asked me about Marc Lalonde. I am in the process of explaining again the matter with Lalonde and it is a full and complete answer. I didn't tell him, sir, that this is the only conversation I ever had or it's the whatever.⁸⁸

Mr. Wolson referred Mr. Mulroney, in this regard, to the fact that Mr. Sheppard did not ask him about Mr. Lalonde. Mr. Wolson suggested to Mr. Mulroney that, although his response to Mr. Sheppard conveyed many of the issues he and Mr. Schreiber discussed at the Mirabel and Queen Elizabeth meetings, it painted only part of the picture of the meetings since he neglected to mention the commercial relationship.⁸⁹ According to Mr. Mulroney, he was "never asked whether [I] had a business relationship of any kind with Mr. Schreiber."⁹⁰ Mr. Mulroney stated, first, "Had I been asked, I would have answered truthfully"; and, second,

the prefatory remarks here deal exclusively with Mr. Lalonde because we are talking about the meeting at the Queen Elizabeth Hotel in the autumn of 1993.

And what was that conversation about? ... a conversation where he fell in love with the Liberals.

He was thrilled at Andre Ouellet ... he was thrilled about Marc Lalonde. I am asked about this. This is what I am in the process of saying. I am beginning to describe it. I get interrupted and Mr. Sheppard again changes the track and then, just – and I think he ends the interrogation.⁹¹

When pressed by Mr. Wolson why he did not provide the full story, which involved his receiving money from Mr. Schreiber, Mr. Mulroney responded that he was not asked the question. Mr. Wolson remarked that, when questioned by Mr. Pratte, Mr. Mulroney "didn't stop at Ian Scott, the distinguished lawyer and Marc Lalonde, the Liberal." Rather, Mr. Mulroney went on to describe Mr. Schreiber's placing an envelope on the table and Mr. Mulroney's taking it and putting it in his safe.⁹² Mr. Mulroney testified that, "[i]f you go back and look at the question that I was asked, I responded to the question and I am answering the question until the point where I am interrupted again by Mr. Sheppard."⁹³ When

Mr. Wolson suggested that Mr. Mulroney was not interrupted at the point when Mr. Sheppard sought clarification, Mr. Mulroney stated that he believed he was, in fact, interrupted.

Mr. Wolson pressed Mr. Mulroney on the fact that he was not interrupted and that he had not fully recounted what took place at the Queen Elizabeth meeting when he stopped answering Mr. Sheppard's question and said, "that was it."⁹⁴ Mr. Wolson suggested that the complete story of what transpired at the Queen Elizabeth meeting or the Mirabel meeting was that a business transaction occurred in which Mr. Mulroney was provided with a cash payment contained in an envelope. Again, Mr. Mulroney disagreed with Mr. Wolson's suggestion, stating that "that was it" refers specifically to the conversation and the work that Mr. Lalonde was trying to do, which was the way I began the conversation and the answer and that this dealt with that Lalonde role."⁹⁵

When referred to the facts that no documentation existed – no evidence of the commercial relationship other than three (or perhaps four) other people who knew and were not talking, and no bank accounts in which money was deposited because it was placed in safes and "squirrelled away," thereby making it impossible for an examiner to know to ask about a commercial relationship⁹⁶ – Mr. Mulroney testified:

I was not – I was not, I think it is fair for me to say this. I was not asked any question as simple as the following: All right, Mr. Mulroney, you had this stuff, you were back in business, and so on. You have to earn a living. Did you have a commercial relationship of any kind with Mr. Schreiber?

The answer would have been yes and I would have described it in detail.

I received no such question.⁹⁷

Mr. Wolson suggested that when a former prime minister of Canada tells the lawyer conducting the examination that he met Mr. Schreiber once or twice for coffee, the examiner's understanding would be that Mr. Mulroney met Mr. Schreiber once or twice for coffee, and "that was it." Mr. Mulroney stated that his response to Mr. Sheppard was in regard to a direct question pertaining to whether he maintained contact with Mr. Schreiber, which he answered in the affirmative: "I met him once or twice for coffee. That was the maintenance of the contact."⁹⁸ Mr. Mulroney then repeated that he was asked hundreds of questions and not one of the nine lawyers⁹⁹ inquired about a commercial relationship.

SETTLEMENT AGREEMENT

In testimony before the Commission, Mr. Mulroney described the events that occurred after the examination before plea. He stated that either the night or a few nights before the first day of the trial, "we got word that the Government of Canada and the RCMP wanted to collapse their case on the courthouse steps and settle."¹⁰⁰

On January 5, 1997, the parties signed the settlement agreement.¹⁰¹ The agreement was made up of 13 paragraphs outlining the basis of the settlement and provided that the RCMP agreed to pay all of Mr. Mulroney's legal fees and disbursements. Mr. Mulroney referred to the following excerpt in particular:

Based on the evidence received to date, the RCMP acknowledges that any conclusions of wrongdoing by the former Prime Minister were – and are – unjustified.¹⁰²

In his cross-examination of Mr. Mulroney, Mr. Schreiber's counsel, Richard Auger, asked if part of Mr. Mulroney's analysis in the decision-making process regarding settlement involved the fact that he could be asked directly about his relationship with Mr. Schreiber at trial. Mr. Mulroney responded, "[T]hat wasn't part of my analysis at all"; and it was not a concern "whatsoever."¹⁰³ Mr. Auger suggested that Mr. Mulroney knew full well that the question could be raised again. Mr. Mulroney stated, "I suppose so."¹⁰⁴ Mr. Auger further suggested that proceeding to trial involved the risk that Mr. Mulroney might have been asked whether Mr. Schreiber ever paid him for his services, to which Mr. Mulroney would have been required to answer "yes." According to Mr. Mulroney, had he been asked the question, he, "of course, would have answered truthfully."

Disclosure and Reporting in and After 1998

In the years following Mr. Mulroney's settlement with the Government of Canada, Mr. Mulroney met with Mr. Schreiber at the Savoy Hotel, corresponded with Mr. Hladun (Mr. Schreiber's counsel), communicated with Mr. Doucet about meetings between Mr. Doucet and Mr. Schreiber, completed a voluntary disclosure to income tax authorities, and was interviewed by William Kaplan. Further, Mr. Mulroney's friends and his spokesperson made statements to the media pertaining to his dealings with Mr. Schreiber. Each of these events is discussed below with reference to the evidence pertaining to Mr. Mulroney's disclosure.

FEBRUARY 2, 1998 (THE SAVOY HOTEL MEETING)

As detailed in Chapters 5 and 6, Mr. Schreiber and Mr. Mulroney met on February 2, 1998, at the Savoy Hotel in Zurich, Switzerland. According to Mr. Schreiber, they discussed Mr. Mulroney's interest in determining whether Mr. Schreiber was aware of any evidence of payments received by Mr. Mulroney.¹⁰⁵ According to Mr. Schreiber, Mr. Mulroney asked whether there was evidence that he had received any payments, and Mr. Schreiber informed Mr. Mulroney that he had no such evidence. Mr. Schreiber did not think they would have even met in 1998 had Mr. Mulroney not initiated this meeting.

In contrast, Mr. Mulroney indicated that they discussed only two matters at the meeting: the Airbus affair, and Mr. Schreiber's pasta business. He indicated that he and Mr. Schreiber did not discuss whether evidence existed of the payments made to him.¹⁰⁶ Mr. Mulroney's explanation for the meeting was that, because the two men had been objective allies over the Airbus situation and hadn't seen each other in some time, he thought it an idea to meet since he was in Switzerland.

MR. MULRONEY'S COMMUNICATIONS WITH MR. HLADUN

Mr. Schreiber's lawyer, Robert Hladun, received three phone calls from Mr. Mulroney and his lawyer, Gérald Tremblay, on October 17, 1999.¹⁰⁷ In the course of their phone conversations, Mr. Mulroney and Mr. Tremblay requested that Mr. Schreiber draft a document indicating that Mr. Schreiber had never provided Mr. Mulroney with any compensation. These calls were made three days before CBC's *the fifth estate* broadcast its program entitled "The Mysterious Dealmaker," which made reference to Mr. Mulroney and Mr. Schreiber.¹⁰⁸

Given the fact that Mr. Schreiber had made three separate payments to Mr. Mulroney in 1993 and 1994, it is important to consider the context and nature of this request from Mr. Mulroney. Following a review of Mr. Hladun's own notes of those telephone calls, I will consider the perspectives of Mr. Hladun, Mr. Mulroney, and Mr. Schreiber to determine the import of Mr. Mulroney's request.

A recounting of the calls and their context is found in a letter of January 26, 2000, from Mr. Hladun to Edward Greenspan, another of Mr. Schreiber's lawyers. In the letter, Mr. Hladun outlined, to the best of his recollection, the calls from Mr. Mulroney and Mr. Tremblay.¹⁰⁹ Mr. Hladun recalled three separate telephone calls:

October 17, [1999]¹¹⁰ – received telephone message to call Gerald Tremblay who advised that he needed a letter from Mr. Schreiber to keep on file and not to disseminate [to] anyone in order to be able to send out a letter to CBC. The letter he would send to CBC, would in his opinion, shut down the airing of the CBC Fifth Estate story on the "AIRBUS" – October 20th?

October 17, 1999 – received a call from Mr. Mulroney who advised that he had instructed Mr. Tremblay to issue a letter to CBC's Fifth Estate indicating that if there was the slightest implication that Mr. Schreiber, Mr. Moores and Brian Mulroney were involved in any way (I assumed as alleged in Letter of Request) then there would be terrible consequences (I assumed that to mean a lawsuit). He would issue the letter but first wanted an assurance or comfort in writing from Mr. Schreiber saying that he would confirm what he had said publicly on many occasions, that at no time did Brian Mulroney solicit or receive compensation of any kind from Schreiber.

He also indicated that he would instruct McCarthy Tétrault, in particular Mr. J. Jeansonne to assist by sending whatever documents we required from their files (this offer was given on a number of previous occasions). ...

October 17, 1999 – another call from Mr. Mulroney at which time I indicated that I was not sure whether or not a letter [from Mr. Schreiber] would be forthcoming.

Mr. Hladun wrote another letter that made reference to the phone calls. On March 17, 2005, he wrote to Daniel Henry, senior legal counsel to the CBC, to “hopefully clarify any misunderstanding of comments attributed to me.”¹¹² In that letter, Mr. Hladun wrote that he had learned the CBC made reference to the fact that it had evidence that Mr. Hladun was asked to “have Mr. Schreiber provide a letter to Mr. Mulroney stating that ‘at no time did Mr. Mulroney solicit or receive compensation of any kind from Mr. Karlheinz Schreiber.’”¹¹³ Mr. Hladun wrote in the letter that no such evidence existed, and that any discussions with anyone were limited in scope to matters pertaining to allegations in the letter of request:

First off, to my mind, there is no such evidence because I never had a conversation with Brian Mulroney about compensation. The only conversations I had with anyone were in the context of and limited to the allegations of improper payments made as referenced in the September, 1995, Letter of Request delivered by the Canadian government to the Swiss authorities, in what became known as the “Airbus” case. My retainer was directed to the allegations stated in that Letter of Request.”¹¹⁴

In addition to the letters from Mr. Hladun, on March 24, 2005, a fax was sent from Mr. Hladun to Samuel Wakim, legal counsel to Mr. Mulroney, attaching a copy of an email from Mr. Schreiber to CBC producer Harvey Cashore.¹¹⁵ Among other matters discussed in the email, Mr. Schreiber wrote that Mr. Cashore should not misinform Canadians and advised that he was not asked to write a letter “that would have involved me in not telling the thruth [sic].”¹¹⁶

Mr. Hladun’s Account of the Correspondence¹¹⁷

Evan Roitenberg, Commission counsel, questioned Mr. Hladun about the relevant correspondence from this period and his understanding of those communications.

With reference to a portion of Mr. Hladun’s letter to Mr. Greenspan of January 26, 2000,¹¹⁸ Mr. Hladun agreed that, generally speaking, it was an accurate depiction, bearing in mind that he understood the letter to be an informal communication between counsel.

Mr. Roitenberg directed Mr. Hladun to an excerpt pertaining to the October 17, 1999, telephone call from Mr. Mulroney in which Mr. Mulroney stated his desire for some “assurance or comfort in writing from Mr. Schreiber saying that he would confirm what he had said publicly on many occasions, that at no time did Brian Mulroney solicit or receive compensation of any kind from Schreiber.”¹¹⁹ In this latter regard, Mr. Hladun could not recall whether the word “compensation” was one used by Mr. Mulroney in the conversation or one that he merely chose himself in the letter.¹²⁰

With reference to his letter to Mr. Henry (counsel to the CBC) of March 17, 2005,¹²¹ Mr. Hladun acknowledged that he wrote this letter, which said the CBC purported to have evidence that he was “asked to have Mr. Schreiber provide a letter to Mr. Mulroney that ‘at no time did Brian Mulroney solicit or receive any compensation of any kind from Mr. Schreiber.’”¹²² Mr. Hladun agreed that the CBC had quoted directly from his letter to Mr. Greenspan of January 26, 2000, and, accordingly, he confirmed that that letter answered the question in terms of the existence of such evidence. However, in his letter of March 17, 2005, Mr. Hladun also wrote, “[T]here is no such evidence because I never had a conversation with Mr. Mulroney about compensation.”¹²³

In regard to this apparent contradiction, Mr. Hladun testified that the letter to Mr. Greenspan was informal and “not italicized or in quotation marks, it is just a statement.”¹²⁴ Mr. Hladun noted that his recollection on March 17, 2005, which was five-and-a-half years after the telephone calls at issue, “dealt with the letter that Mr. Tremblay and Mr. Mulroney were speaking of. So there was no conversation about compensation in the context of a payment for loss or damages, as that word most appropriately is used.” Mr. Hladun ultimately attempted to reconcile the two apparently contradictory letters by testifying that the context of the conversations that he had with Mr. Mulroney dealt with the letter of request and the improper payments alleged within it. He added:

The CBC’s *the fifth estate* was coming with a program that dealt with Airbus – dealt with what they were focusing on, which was the payments that they allege were secret commissions and Airbus.

So that’s the context, improper payments to do with what is alleged in that letter.¹²⁵

With reference to his fax transmission to Mr. Wakim of March 24, 2005, with the email from Mr. Schreiber attached,¹²⁶ Mr. Hladun stated that he did not have any recollection regarding the date on which the attached email was written or sent. Mr. Hladun agreed that the email would have been written on or before March 10, 2005, and that this was his best approximation.¹²⁷

Mr. Mulroney’s Account of the Correspondence

Mr. Pratte referred Mr. Mulroney to Mr. Hladun’s January 26, 2000, letter to Mr. Greenspan and the following excerpt:

received a call from Mr. Mulroney who advised that he had instructed Mr. Tremblay to issue a letter to CBC’s *Fifth Estate* indicating that if there was the slightest implication that Mr. Schreiber, Mr. Moores and Brian Mulroney were involved in any way (I assumed as alleged in Letter of Request) then there would be terrible consequences (I assumed that to mean a lawsuit).¹²⁸

With reference to this excerpt, Mr. Mulroney testified that he recalled speaking with Mr. Hladun about that time and that Mr. Hladun's assumption – that the letter to be issued to *the fifth estate* related to the allegations in the LOR – was correct. In particular, Mr. Mulroney indicated that he had “Airbus” in mind during his discussions with Mr. Hladun. Mr. Mulroney expounded in his testimony:

Look, the fifth estate has been on a mission for 15 or 20 years to prove that I got Airbus money. Then they changed their mind. When that was exploded in their face, they changed their mind and said oh, we made a little mistake. Now we are going to prove that he did something else.

When that's finished, they will be on to something else. I mean after all, they operate 100 per cent with taxpayers' money, and once they set out on these vendettas ... it's hard for the guy on the other side.

So they were on another one of their events there, and I thought this would be important for us to make it very clear from Mr. Hladun that there had never ever been a request for anything other than that.¹²⁹

Similarly, Mr. Mulroney testified that the request to Mr. Hladun for “an assurance or comfort in writing” from Mr. Schreiber also referred to Airbus.

With further reference to the January 26, 2000, letter, Mr. Mulroney testified that he had “very probably” instructed Mr. Tremblay to call Mr. Hladun.¹³⁰

Mr. Schreiber's Perspective on the Correspondence

Mr. Schreiber was also questioned in Commission proceedings about requests of him to make specific written assurances to Mr. Mulroney. In his questioning of Mr. Schreiber on this issue, Mr. Wolson read an excerpt from the transcript of the October 31, 2007, broadcast of *the fifth estate*, where Mr. Schreiber stated that, to provide an affidavit or a declaration that Mr. Mulroney never received money from him, would amount to perjury.¹³¹ Mr. Schreiber then confirmed, in testimony before this Commission, that he put the same information in his affidavit of November 7, 2007.¹³² Paragraph 30 of Mr. Schreiber's affidavit reads:

... Mr. Mulroney repeated to Mr. Hladun a similar request as made on prior occasions all to the effect that I provide in an affidavit assurances that “at no time did Brian Mulroney solicit or receive compensation of any kind from Schreiber.”¹³³

Mr. Wolson subsequently directed Mr. Schreiber to his email to Harvey Cashore, a producer of *the fifth estate's* “The Mysterious Dealmaker” episode, in which Mr. Schreiber stated: “Do not misinform Canadians. I was not asked to write a letter, that would have involved me in not telling the truth.” With reference to this email, Mr. Schreiber indicated that it was correct because he was asked to provide an “affidavit,” and he distinguished between an affidavit and a letter. In this regard, Mr. Schreiber continued: “[T]his was an event which was orchestrated

because Mr. Mulroney wanted to send a letter to the CBC, and his friend Sam Wakim was heavily involved in this, seeing my lawyers and discussing it. This went back and forth.” According to Mr. Schreiber, he was also asked to send a letter to the CBC and did so.¹³⁴

Mr. Schreiber was also directed to Mr. Hladun’s March 17, 2005, letter to Mr. Henry, in which Mr. Hladun clarified comments attributed to him and indicated that the only conversations he had with anyone were in the context of, and limited to, the allegations of improper payments in the LOR. When asked why he did not include this letter in his affidavit of November 7, 2007, Mr. Schreiber testified that he omitted the letter because there was more than one letter sent to the CBC at Mr. Mulroney’s request. Mr. Schreiber admitted, however, that this letter provided an answer to paragraph 30 of his affidavit and that he did not refer to it.¹³⁵

Another letter presented to Mr. Schreiber was Mr. Hladun’s letter to Mr. Greenspan of January 26, 2000. Mr. Schreiber agreed that this letter was written at Mr. Greenspan’s request following calls that were allegedly received by Mr. Hladun just before *the fifth estate* program, “The Mysterious Dealmaker,” was to be broadcast on October 20, 1999.¹³⁶

MR. SCHREIBER’S ARREST IN AUGUST 1999

Mr. Schreiber’s arrest is covered in detail in Chapter 5, in the context of his relationship with Mr. Mulroney. To provide context for what follows, I simply note here that, on August 31, 1999, Mr. Schreiber was arrested by the RCMP on a German arrest warrant.

THE FIFTH ESTATE’S “THE MYSTERIOUS DEALMAKER”

On October 20, 1999, *the fifth estate* broadcast “The Mysterious Dealmaker.”¹³⁷ Chapter 5 discusses the episode in the context of its effect on the relationship between Mr. Schreiber and Mr. Mulroney. The purpose of its inclusion here is to review Mr. Mulroney’s disposition in his interactions with the media, what was said by his spokesperson, Luc Lavoie; and, of equal import, what was not said.

Mr. Lavoie’s Account

Luc Lavoie acted as Mr. Mulroney’s spokesperson between 1995 and 2007. Mr. Lavoie said that his involvement with Mr. Cashore was prompted by a phone call he received from Mr. Mulroney on the Friday before the Thanksgiving weekend in 1999.¹³⁸ Mr. Lavoie explained that Mr. Mulroney had informed him that a letter was received from Mr. Cashore, asking to meet about some new information.¹³⁹ Mr. Mulroney then asked Mr. Lavoie to contact Mr. Cashore to ascertain this new information. A number of conversations followed between Mr. Lavoie and Mr. Cashore in October 1999 before the airing of “The Mysterious Dealmaker.”¹⁴⁰

Although Mr. Cashore wanted to speak directly to Mr. Mulroney, Mr. Lavoie told him that it was not “an option” at the time.¹⁴¹ Accordingly, Mr. Lavoie advised Mr. Cashore on more than one occasion (and during almost every telephone discussion) that he was asked to obtain the information, convey it to Mr. Mulroney, elicit answers from Mr. Mulroney, and then convey those answers to Mr. Cashore. In one of the conversations, however, Mr. Lavoie said that, if he were provided with more specific information, Mr. Mulroney might agree to speak with Mr. Cashore.¹⁴²

Mr. Lavoie commented during these discussions that Mr. Schreiber was “pushing” a project in Nova Scotia circa 1985, “got to” people in Mr. Mulroney’s entourage, and “made the project sound like it was very credible.” Mr. Lavoie noted that investment into Cape Breton was necessary at the time and “that’s essentially where the relationship existed. That’s about it. There was nothing else to the relationship.” Mr. Lavoie also referred Mr. Cashore to Mr. Mulroney’s examination before plea in April 1996, stating: “And he was under oath and he said there, everything I guess that one can say about this relationship with Karlheinz Schreiber.”

With respect to meetings after Mr. Mulroney was prime minister, Mr. Lavoie said to Mr. Cashore that they met once at the Queen Elizabeth Hotel because Mr. Schreiber was “in town” and wanted to discuss the project he was still attempting to advance: “So Mulroney thought it was a funny thing and he went and he said he had a coffee with him. That’s it.”

During a phone interview on October 8, 1999, Mr. Cashore told Mr. Lavoie:

[W]e have some information that we have obtained about Karlheinz Schreiber’s bank account, and one possible interpretation of these facts that we have obtained – and I have to stress possible interpretation – might be – ... that one of them was intended for Brian Mulroney.¹⁴³

During this same discussion, Mr. Lavoie repeatedly asked for more information and indicated that he would “check it out as much as I can.”¹⁴⁴ Mr. Lavoie was informed that money was transferred into this account, unlike the other accounts, and money “went out.”¹⁴⁵ Mr. Lavoie explained that, during his discussions with Mr. Cashore, he learned that Mr. Schreiber had a bank account under a name that could suggest Mr. Mulroney “was involved.”¹⁴⁶ Mr. Lavoie testified, however, that Mr. Cashore did not inform him of the name of the particular account.¹⁴⁷

Mr. Lavoie told Mr. Cashore that he briefed Mr. Mulroney on the information gathered from Mr. Cashore.¹⁴⁸ Mr. Lavoie testified that Mr. Mulroney did not provide him with any information concerning the bank account at issue¹⁴⁹ and confirmed that he was unaware at the time of the payments Mr. Mulroney had received from Mr. Schreiber.

During his discussion with Mr. Cashore on October 9, 1999, Mr. Lavoie asked whether Mr. Mulroney’s name or a code name appeared in any document that

Mr. Cashore had seen, showing that Mr. Mulroney had received money from anybody. Mr. Cashore told him “there is a code name that, if you looked at it, you might say that.”¹⁵⁰ Mr. Lavoie subsequently remarked:

We believe, but we don’t want this to be spread around in any way shape or form, that Karlheinz Schreiber is the biggest fucking liar the world has ever seen, you know what I mean? [laughs] That’s what we’ll believe. And we are very afraid that this man was quite capable of using anybody’s name to get money from somebody else. We have no proof of that. We have no evidence to that that would lead us to believe that. But ... But this is the way we feel about it. And that is certainly why Mr. Mulroney is so nervous.¹⁵¹

Mr. Lavoie testified that this statement was made within the context of the LOR, which “described Mr. Mulroney as a criminal” involved in a “plot to defraud” the Canadian government and to receive “\$5 million in kickbacks, in Swiss bank accounts.”¹⁵² Mr. Lavoie testified that “we had learned” that Giorgio Pelossi, Mr. Schreiber’s accountant, had stated he had been informed that a portion of the money received in relation to the sale of the Airbus airplanes was intended for Mr. Mulroney.¹⁵³ Mr. Lavoie explained that a theory had been deduced from these circumstances: to take advantage of German tax laws that permitted tax deductions for bribes, Mr. Schreiber was using other peoples’ names to pass off what was income for something that wasn’t. Later in the same conversation with Mr. Cashore, Mr. Lavoie made the following statement: “But if ever there is the name of Brian Mulroney anywhere, it has to be that because there never was any money.”¹⁵⁴ Mr. Lavoie noted that he discussed this theory with Mr. Mulroney, and he testified that his statement to Mr. Cashore (about Mr. Schreiber being a liar) was made on the basis of an overall impression “which was unfounded, in fact, that was more based on an instinctive perception of the individual we were doing business with.”¹⁵⁵

Mr. Lavoie testified that all these comments were made in the context of the LOR, which mentioned Mr. Mulroney’s involvement in defrauding the Canadian government and that \$5 million was deposited in a Swiss bank account under the code name “Devon.” Mr. Lavoie noted that, in the four years which ensued following the issuance of the LOR, “many things were learned,” including – from a letter from the Swiss minister of justice – that Mr. Mulroney never had a Swiss bank account with or without a code name; so the LOR was completely false, and the “whole affair” was based on information from a journalist who had become a police informant.¹⁵⁶ In testimony, Mr. Lavoie explained that the expression “there was never any money” meant Mr. Mulroney never had any money in a Swiss account: “\$5 million in kickbacks on airplanes, helicopters and I don’t know what all. This never existed. It was fiction.”¹⁵⁷

Mr. Mulroney’s Account

With reference to Mr. Cashore’s letter to Mr. Mulroney of October 8, 1999,¹⁵⁸ requesting a meeting regarding new information, Mr. Mulroney said that he did not

agree to speak with *the fifth estate* but that it was possible someone else spoke with *the fifth estate* on his behalf.¹⁵⁹ In this regard, Mr. Mulroney acknowledged that, as a general rule, Mr. Lavoie was authorized to make public representations on his behalf. However, he noted that, from time to time, Mr. Lavoie made comments that he (Mr. Mulroney) would not have made. Mr. Mulroney believed Mr. Lavoie withdrew his comment about Mr. Schreiber being a liar and said that Mr. Lavoie was not authorized to make that comment.

Mr. Doucet's Meetings with Mr. Schreiber in 1999–2000

As noted in Chapters 5 and 6, Mr. Doucet questioned Mr. Schreiber's bona fides after Mr. Schreiber's arrest in 1999 and his subsequent involvement with the media. Mr. Doucet stated that, as a consequence of Mr. Schreiber's appearance on *the fifth estate*, he began making notes on his conversations with Mr. Schreiber. The discussions in Chapters 5 and 6 focused on the relationship and the agreement between Mr. Mulroney and Mr. Schreiber. In this chapter, Mr. Doucet's notes and his meetings with Mr. Schreiber are relevant to Mr. Mulroney's disclosure. The meetings to which I refer include meetings on December 26, 1999, January 11, 2000, and February 4, 2000. Mr. Doucet presented Mr. Schreiber with what has been referred to as the "mandate document" at the meeting of February 4, 2000. That document purported to memorialize the agreement made by Mr. Schreiber and Mr. Mulroney on August 27, 1993, at the hotel at Mirabel Airport. Because the facts have been fully canvassed in Chapter 6, there is no need to repeat them here. I should, however, comment on the concerns raised by those facts.

The meetings that took place between Mr. Doucet and Mr. Schreiber at the end of 1999 and the beginning of 2000 involved, in part, discussions relating to what Mr. Schreiber might say if asked, under oath, about his relationship with Mr. Mulroney. Further, one meeting specifically dealt with an attempt by Mr. Doucet to memorialize retroactively the agreement between Mr. Schreiber and Mr. Mulroney. These two areas are directly relevant to the issue of disclosure and reporting. Both Mr. Mulroney and Mr. Doucet testified about the extent to which Mr. Mulroney was aware that these topics were being discussed and admitted that Mr. Doucet was reporting back to Mr. Mulroney.

Mr. Mulroney's Voluntary Tax Disclosure

Within the time frame in which Mr. Doucet and Mr. Schreiber were meeting in early 2000 – January 11 to February 4 – Mr. Mulroney's tax lawyer, Wilfrid Lefebvre, a partner of Mr. Mulroney's at his law firm, Ogilvy Renault, was negotiating a voluntary disclosure with the Canada Customs and Revenue Agency (CCRA).¹⁶⁰

On January 10, 2000, one day before Mr. Doucet's meeting with Mr. Schreiber, Mr. Lefebvre wrote a letter to an officer in the CCRA's Voluntary Disclosures Program, Jean-Louis Lussier.¹⁶¹ In this letter, Mr. Lefebvre referred to a meeting on January 5, 2000, in which three items were agreed: (1) the disclosure was assigned a file number as of January 5, 2000; (2) the disclosure involved amounts between \$150,000 and \$225,000 and would be completed by March 5, 2000; and (3) the basis of taxation, affecting taxation years 1994–96, would be agreed upon in accordance with the CCRA's policy once the particulars of the amounts involved were known. As previously agreed, Mr. Lefebvre requested in the letter that Mr. Lussier inform the Quebec Ministry of Revenue (Revenu Québec) tax authorities of the disclosure.¹⁶²

Mr. Lefebvre wrote a follow-up letter to Mr. Lussier on January 27, 2000,¹⁶³ referring to the four items to which they had agreed. The first two of these items were (1) the disclosure would be considered voluntary because no investigation was initiated or under way by Revenu Québec or the CCRA; and (2) \$75,000 was the amount involved in each of the taxation years 1993, 1994, and 1995 (not 1994, 1995, and 1996 as indicated in the letter of January 10, 2000). Although a "significant portion of those amounts was used to defray expenditures that would be eligible for deduction," evidentiary difficulties precluded any claims of those expenditures.¹⁶⁴ The other two items were (3) confirmation that the payer of the amounts was a non-resident and that no Canadian tax implications would result for the payer: "Given the complete agreement that these amounts be treated as revenue accounts, the name of the payer will not be disclosed";¹⁶⁵ and (4) reiteration of the need to agree upon the basis of taxation in accordance with CCRA policy. Mr. Lefebvre noted in the letter that he understood that Revenu Québec's tax authorities were informed of the situation.¹⁶⁶

Mr. Lefebvre wrote another letter to Mr. Lussier, on February 2, 2000, two days before Mr. Doucet's meeting with Mr. Schreiber regarding the mandate document on February 4, 2000.¹⁶⁷ This letter, which confirmed the relevant amounts and taxation years referred to in the letter of January 27, 2000, represented the agreement among the taxpayer (Mr. Mulroney), the CCRA, and Revenu Québec. The terms of that agreement are set out in points one to four:

- 1 the disclosure is voluntary;
- 2 the relevant amounts and taxation years are \$75,000 in each of 1993, 1994, and 1995, which amounts will be taxed at the federal and provincial levels. The "taxpayer will file an application for an amended return correcting the amounts

entered in his returns for 1996, 1997 and 1998 to add \$37,500 for each of these years” (to be assessed with interest but with no penalty);

3 the taxpayer confirms that the disclosure is complete; and

4 the taxpayer confirms that the payer of the amounts is a non-resident, no Canadian tax implications result for the payer, and the name of the payer will, accordingly, not have to be disclosed.

The letter also noted that the name of the taxpayer would be disclosed in the following week.¹⁶⁸

In Commission proceedings, counsel for the parties reviewed partially redacted copies of Mr. Mulroney’s notice of reassessment and amended income tax returns for the years 1996, 1997, and 1998. Having examined the documents, counsel for the parties confirmed in an agreed statement of facts that the amended returns increased Mr. Mulroney’s business and professional income by \$37,500 in each of those years.¹⁶⁹

MR. MULRONEY’S ACCOUNT OF THE VOLUNTARY DISCLOSURE

Mr. Mulroney testified that he decided to terminate his retainer with Mr. Schreiber in December 1999 for two reasons: Mr. Schreiber had recently said publicly that Mr. Mulroney might have an income tax problem, and the German government had laid criminal charges against Mr. Schreiber and now sought his extradition to Germany. It was clear to Mr. Mulroney, he said, that Mr. Schreiber intended to create an income tax problem for him, so he felt that any formal association between them was no longer appropriate. Accordingly, in late 1999 Mr. Mulroney decided to declare the money he had received from Mr. Schreiber as income.

Mr. Mulroney stated that, in his understanding, Mr. Schreiber had retained him to further his (Mr. Schreiber’s) corporate interests, which he principally construed as Thyssen vehicles. The retainer did not cover a particular period of time and was open-ended.

When asked whether he would have reported the \$225,000 to the CCRA had Mr. Schreiber not been arrested, Mr. Mulroney testified that it was a “hypothetical question.” He explained that, because he was “on a retainer,” he did not have to report anything and that he was not late in the reporting of his taxes. When the retainer came to an end, he would have declared it as income and paid the taxes.¹⁷⁰

Mr. Mulroney did not declare the cash payments and take a reserve of \$225,000 on his income tax in the years 1993–99, nor did he think or know he was required to do so. Mr. Mulroney testified, “[M]y advice to this day was that I didn’t have to do it.”¹⁷¹ According to Mr. Mulroney, when he received the cash payments, he viewed them as retainer money – and that meant he did not need to declare them as income for tax purposes until they were taken into his income stream as his own money. Mr. Mulroney testified that, in his understanding, he was entitled to take expenses if he wished without declaring any retainer money as income until it became his own money.

When asked why he did not declare the money he earned for the trip to China, less the expenses, Mr. Mulroney maintained that he was operating in a retainer arrangement. According to Mr. Mulroney, “the money would become mine only when the retainer was exhausted or had been collapsed.”¹⁷² He testified that he did not take the fees into income because he didn’t charge any fees at the time: “I wasn’t in that business at the time because it was a retainer.”¹⁷³ Similarly in 1994, 1995, and 1996, Mr. Mulroney did not declare the fees he earned for the trips he took to France and Russia against the expenses.

In December 1999 Mr. Mulroney instructed Mr. Lefebvre to resolve matters in a “fair and expeditious manner” and, if there were any areas in doubt, to do so in favour of the government.¹⁷⁴ He informed Mr. Lefebvre of the relevant information related to his arrangement with Mr. Schreiber, including the background, the \$225,000 figure, and the locations of the money. Mr. Mulroney stated that he had no involvement whatsoever in the disclosure process: he did not see any of the communications with the CCRA; and he did not speak with Mr. Lefebvre again until he was informed that the matter had been resolved and that cheques had to be prepared.

Mr. Mulroney confirmed that \$37,500 was added to his income for taxation years 1996, 1997, and 1998 and that he paid the amounts owing. With reference to the payment of this amount, Mr. Mulroney testified that he considered \$100,000 to be a lot of money, but that it was “readily handled, accommodated” in the context of his gross revenues.¹⁷⁵

Mr. Wolson inquired why, if Mr. Mulroney chose to end the retainer in 1999, he did not declare the income of \$225,000 in 1999, instead of pursuing the route of a voluntary tax disclosure. Mr. Mulroney responded that he had nothing to do with opting for a voluntary tax disclosure; he simply turned the matter over to his tax advisers. These advisers in turn assured him that selecting the voluntary disclosure vehicle connoted no culpability of any kind on his behalf. At no time did he know whether the CCRA advised his counsel that there was an irregularity and a deficiency that required disclosure through the voluntary disclosure program. He did not know who met with whom, but he was told by his advisers that there had been no deficiency. Revenue Canada Information Circular 85-1R2, “Voluntary Disclosures,” dated October 23, 1992, paragraph 1, reads: “To promote voluntary compliance with Canada’s tax laws, the Department encourages taxpayers, both individuals and corporations, to come forward and correct deficiencies in their past tax affairs.”¹⁷⁶ With reference to this excerpt, Mr. Mulroney stated that he first saw this circular during Commission proceedings. In his judgment, the cash payments from Mr. Schreiber were brought into his income in the normal course; there was no irregularity about the cash payments becoming income in late 1999; and there was no deficiency in his tax affairs.

Mr. Mulroney confirmed that the transaction with Mr. Schreiber was a mistake and an error, and he took responsibility for it. He testified that he came to this conclusion around the same time that he declared the retainer as income, though he believed it was before 1999.

With reference to the letter from Mr. Lefebvre to Mr. Lussier of January 10, 2000, which mentioned an amount of undeclared income ranging from \$150,000 to \$225,000, Mr. Mulroney stated that he did not know if the monies he had received from Mr. Schreiber in New York accounted for this disparity in the total amount.¹⁷⁷ He suggested that Mr. Lefebvre might also have been taking his \$45,000–\$50,000 of expenses into consideration, because, at that time, they may not have concluded their discussion on whether to include the expenses.

It is evident from the letter Mr. Lefebvre wrote to Mr. Lussier on January 27, 2000, that he believed the mandate was for a term of three years. Mr. Mulroney provided varying explanations as to why Mr. Lefebvre had this impression. First, he indicated that Mr. Lefebvre probably made an assumption about the three-year period after their original conversation. Second, he said that Mr. Lefebvre might have learned of the three-year period from discussions, correspondence, his accountant, or even from himself – he simply did not know.¹⁷⁸ Third, although he acknowledged that the information could not have come from anybody but himself, he stated that the three-year period could be derived from a simple calculation.¹⁷⁹ Mr. Mulroney was retained in 1993; he performed work in 1993, 1994, and 1995; his “world was blown apart” in 1995 by the Airbus matter, resulting in a three-year hiatus; he met with Mr. Schreiber in 1998 and attempted to “move things along”; and, finally, in 1999 he sought to terminate his relationship with Mr. Schreiber.¹⁸⁰

Mr. Mulroney stated that he did not tell Mr. Lefebvre at the time that he was working on or obtaining the mandate document, in which the deal was memorialized by Mr. Doucet (see Chapter 6).

Mr. Mulroney did not deduct his expenses from his income, even though he was in the highest income tax bracket. He stated that he instructed his tax advisers to resolve any doubt “in favour of the government,” and that he informed them he did not have a problem if they decided not to deduct expenses. Mr. Mulroney stated that he had disposed of his expense records in the ordinary course of events.¹⁸¹

With reference to the statement in Mr. Lefebvre’s letter of January 27, 2000, that “evidentiary difficulties preclude us from claiming said expenditures,”¹⁸² Mr. Mulroney testified that he did not have all the credit card receipts and annotations with regard to the personal expenses he had incurred. He said that Mr. Lefebvre and he had decided that, “rather than get into any difficulty or any quarrel with the government of any kind,” they should “forget the expenses.”¹⁸³ He denied that, if his expenses had been declared and challenged, he would then have had to explain his retainer, his client, and what he had done to earn the money and accumulate the expenses incurred: “No,” he said,

"I would have had to – my attorney would have had to meet with them, as I was informed simply – ... and explain quite [sic] the inadequate documentation."¹⁸⁴

With reference to Mr. Lefebvre's letter to Mr. Lussier of February 2, 2000, Mr. Mulroney said that he saw the letter for the first time when he was preparing for his testimony before the Commission. He confirmed that the letter advises the CCRA that the amount was \$75,000 for each of three years, for a total of \$225,000. With reference to the agreement that Mr. Mulroney's returns for the years 1996–98 be corrected and that the amounts owing be assessed with interest, Mr. Mulroney said that he did not know why he paid interest if the government was not entitled to the income tax before 1999.

Mr. Mulroney testified that he did not instruct that Mr. Schreiber's name not be disclosed in the agreement as the payer of the retainer fees – nor was he aware at the time of this request by Mr. Lefebvre. Mr. Mulroney assumed that Mr. Lefebvre incorporated this term of the agreement of his own volition.

Mr. Mulroney did not charge or collect GST in relation to his services for Mr. Schreiber. He stated that he was not required to do so because the services were international in scope, and the GST, as a consumption tax, "comes off at the border."¹⁸⁵

MR. DOUCET'S ACCOUNT OF THE VOLUNTARY DISCLOSURE

Mr. Doucet testified that, at the time he was drafting the mandate document and arranging the meeting with Mr. Schreiber for February 4, 2000, he was not aware that Mr. Mulroney was contemplating, or in the course of making, a voluntary disclosure to Revenue Canada.¹⁸⁶ Only later did he learn from the media that Mr. Mulroney had made a voluntary disclosure.¹⁸⁷

MR. SCHREIBER'S ACCOUNT OF THE VOLUNTARY DISCLOSURE

Mr. Schreiber testified that he learned about Mr. Mulroney's voluntary disclosure at the end of 1999 from his lawyer, Mr. Greenspan. With reference to his residency status for tax purposes, as discussed in Mr. Lefebvre's letters of January 27, 2000, and February 2, 2000, in relation to disclosure of Mr. Schreiber's name, he said that he was not personally a resident of Canada for tax purposes, though he was one through his companies.

THE CRA'S VOLUNTARY DISCLOSURE PROGRAM

Christiane Sauvé is currently a team leader in the Montreal Office of the Canada Revenue Agency (CRA). She worked in the CRA's voluntary disclosure program from 2001 to 2006, and appeared before the Commission to answer questions about the program as it was applied in 2000 to taxpayers residing in Quebec.¹⁸⁸ According to Ms. Sauvé, one purpose of the program is to enable taxpayers who have omitted to

disclose a portion of their income, either voluntarily or involuntarily,¹⁸⁹ to correct tax omissions and comply with the *Income Tax Act* (the Act).¹⁹⁰

Ms. Sauvé explained that the voluntary disclosure program allows taxpayers to regularize their fiscal situation. By so doing, they also avoid all penalties that might apply to that income and the criminal proceedings that might result if the file were audited. The program allows the CRA to recover amounts that could not have been recovered otherwise and lowers its administrative costs. Taxpayers are reintegrated into the system and taxed on all their income: once a taxpayer has made a disclosure, the amount becomes a known amount and, if it generates income, that income is taxable for the future.¹⁹¹

In terms of the process for registration in the voluntary disclosure program, Ms. Sauvé said that taxpayers would generally contact the CRA either directly or through representatives. Most files would be opened anonymously (having only the name of the taxpayer's representative on file). A preliminary determination would be made as to whether the situation as described was suitable for consideration under the program. If so, the taxpayer's representative and the CRA would enter into discussions to attempt to reach a settlement. If the individual was deemed eligible for the program, and a settlement was reached, the taxpayer would identify himself or herself and provide the documents or information that had to be verified. Finally, the individual would produce amended returns that reflected the additional income.

Ms. Sauvé explained that three criteria had to be met for a taxpayer to be eligible for the voluntary disclosure program. The disclosure had to be voluntary; it had to be verifiable; and taxes had to be paid:

- 1 Voluntary: The taxpayer was not subject to any form of investigation or audit by the tax authorities. No enforcement action was undertaken or begun.¹⁹²
- 2 Verifiable: Where the file is anonymous, after the initial approach, determination of eligibility for the program, and disclosure of the facts and circumstances, the taxpayer would identify himself or herself and provide the documents and information for verification. If the information corresponded with the needs of CRA, and risk management for the file seemed reasonable (for example, the amount in question was not very large), the CRA would not conduct an in-depth verification. In some circumstances, if the information submitted was unsatisfactory, the file might be sent for verification. Once that was completed, the disclosure was accepted if the verification corresponded to the information and documents disclosed by the taxpayer. Otherwise, the disclosure was rejected and the taxpayer was subject to penalties and possible legal action.¹⁹³
- 3 Payment of the tax: The taxpayer was expected to pay the taxes owing quickly, though it was possible to make arrangements with the CRA in situations where it was reasonable to do so.¹⁹⁴

With reference to arrangements that could be considered with a taxpayer regarding details of the disclosure, Ms. Sauvé testified that, when it was impossible for the CRA to determine the source or nature of the funds, there was a policy in Quebec to divide the disclosed amount in two, and the taxpayer was taxed on this halved amount. This policy would apply where the amounts could not be identified or when the amounts could not necessarily be verified.

According to Ms. Sauvé, CRA had also developed an approach to handle cases where income had been earned and should have been declared several years earlier. In these cases, CRA would reduce the income amount by 50 percent where the nature of the funds was difficult to identify. The amount might relate to different types of income: for instance, if the amount was corporate income, it would enable offsetting expenses; or if it was a gift or an inheritance, it would preclude taxation. In these cases, a letter of agreement was drawn up, and the taxpayer would produce an amended return. The taxpayer was then required to attach the payment for the agreed amount. As a general rule, the amended return pertained to the three most recent taxation years. This policy existed because there were no relief provisions at that time: the interest imposed on taxpayers was quite punitive and led certain taxpayers to withdraw their proposals. This policy is no longer in effect. Today, the income actually earned must be taxed in the years it was earned. CRA officials may, however, negotiate with the taxpayer regarding the interest charged.

THE RETAINER PROVISIONS OF THE *INCOME TAX ACT*

Wayne Adams is currently the director general of income tax rulings at the CRA. He appeared before the Commission to explain sections of the *Income Tax Act* that relate to the general obligations of persons who render services based on retainers.¹⁹⁵ He said that, pursuant to section 9 of the Act, income from a business is computed based on its profit, which is largely an accounting determination applying the General Accepted Commercial Principles. According to Mr. Adams, paragraph 12(1)(a) of the Act was added by Parliament in order to include in income any amounts received on account of services to be rendered, including services that might be rendered after the end of the year. In situations where amounts have been received related to services to be rendered after the end of the year, the business is allowed a deduction, which is referred to as a reserve under paragraph 20(1)(m), “related to the value of the services to be provided after the end of the year.”¹⁹⁶ In other words, if some services were rendered during the year in which the money was received, while other services remained to be rendered, the person would declare all the money as income and then claim a reserve. Mr. Adams indicated that these retainer provisions were in force in the 1990s and in 2000.

By way of example, Mr. Adams explained that, if a person were to do \$100 worth of work in the year he or she receives a \$1,000 retainer, that person would be entitled to claim a reserve of \$900, reflecting the remaining services to be rendered. In this example, the person would have a “net inclusion” of \$100.¹⁹⁷ Expenses related to the

person's income-earning operation would be a further reduction to the amount related to that particular relationship. In the example, if expenses of \$50 were related to the \$100 net inclusion, those expenses could be deducted from the \$100.

According to Mr. Adams, if a person received a retainer and no services were rendered during the year in which the retainer was received, there would be no net inclusion in income. For example, in the year the person received \$1,000, that person would declare it as income but also claim a reserve of the same amount.

Mr. Adams testified that it is incumbent on both the service provider and the customer to make a clear determination of what it is that the contractual relationship expects. If no services have been provided after a certain number of years, Mr. Adams said: "I guess one wonders, are there really determinable or definable services to be provided?"¹⁹⁸ In the event that no services are to be provided after the end of the year, it is possible that, at some point, no reserve will be available – and income recognition would be necessary unless those funds were returned to the customer.

However, Mr. Adams indicated that, if there are services that may be rendered in future years, there would be a continued deferral of income recognition. That would involve, in those subsequent years, adding back the reserve that is claimed and, at the end of the year, claiming a new reserve. Mr. Adams explained that such a situation may properly be determined to be an "availability fee, as opposed to just specific services to be provided, and one might conclude that it was income either at the year received or some period after that."¹⁹⁹

Mr. Adams testified that, if a retainer in relation to services were brought to an end because the services had finally been rendered, "any residual amount that hadn't yet been realized for income purposes would then have to be 'realized.'"²⁰⁰ Otherwise, the CRA would look to see whether the funds were returned to the customer.²⁰¹

With reference to the impact that production of an invoice has on reporting obligations, Mr. Adams indicated that, if someone earns the money, whether the work has been invoiced or not, the reporting obligations would then apply.²⁰²

Record Keeping

Mr. Adams also testified regarding the record-keeping obligations under the Act. He stated: "One is expected to produce books and records to allow departmental officials to review and verify amounts that are reported. If there is a lack of documentation, reasons for that could be considered or discussed."²⁰³ Mr. Adams noted that there is an obligation under the Act to make one's books and records available to the CRA for review. The records are expected to be of a certain level to permit such a review.

With regard to the retention period for records of expenses, Mr. Adams testified that "books and records requirements and retention periods [are] defined in the Act." He believed the Act suggests that taxpayers keep records for six years. Mr. Adams noted that, if no expenses are claimed, the CRA would not inquire about them.²⁰⁴

Involvement of Mr. Lavoie, 1995–2007

As noted earlier in this chapter, Luc Lavoie acted as Mr. Mulroney's spokesperson between 1995 and December 2007.²⁰⁵ According to Mr. Lavoie, he first heard of the cash payments Mr. Mulroney had received from Mr. Schreiber in the spring of 2000. He was informed of the payments by Gérald Tremblay, Mr. Mulroney's lawyer, during a telephone call. He learned that Mr. Mulroney had acted as a consultant for Mr. Schreiber and had received a cash retainer in three payments of tens of thousands of dollars, on which tax had been paid.

Mr. Lavoie testified that, after becoming aware of the business relationship between Mr. Schreiber and Mr. Mulroney, in the summer of 2000 he explained to Mr. Mulroney that he was convinced the relationship would become public. As a public relations professional, he stated that, "even if it's disastrous and catastrophic ... you are always better off to bring it out yourself ... because ... you're going to be able to reduce the damage a bit by putting it in context."²⁰⁶ Mr. Lavoie testified that he spoke about the issue further with Mr. Mulroney on four or five occasions. He noted that the first reaction of most clients to negative news is to request him to "do everything to smother [the story]," but Mr. Mulroney did not react in this manner.²⁰⁷

Mr. Mulroney testified that Mr. Lavoie was right to propose that he (Mr. Mulroney) make the information public. He maintained that his business dealings with Mr. Schreiber were an innocent transaction, for which he had worked for the payments and declared taxes on them, and that he would have been "well served" had he followed Mr. Lavoie's advice.²⁰⁸

Mr. Wolson asked Mr. Mulroney about William Kaplan's notes of his dinner with Mr. Lavoie on March 8, 2006. According to these notes, Mr. Lavoie suggested that Mr. Mulroney panicked when he was confronted with the possibility of the information becoming public: "He told me that Mulroney was so afraid of this information coming out that he panicked and that explains why he kept it secret."²⁰⁹ With reference to this excerpt, Mr. Mulroney said he assumed that it referred to the "original years,"²¹⁰ and he clarified that he did not panic about the later business relationship. He said he considered Mr. Lavoie's reported comment to be "probably an infelicitous turn of phrase." Nonetheless, he said his "strong preference would have been that this matter remain private."²¹¹ According to Mr. Mulroney, it was a private matter in the private sector after he had left office, and he was interested "in keeping a private transaction private, that's all."²¹²

STATEMENTS BY MR. LAVOIE

Mr. Lavoie made a number of statements to the media regarding Mr. Schreiber's three payments to Mr. Mulroney. I refer to some of these comments as they shed light on the issue of disclosure of the payment by Mr. Mulroney through his spokesperson.

Mr. Lavoie had a number of conversations with Mr. Kaplan.²¹³ Mr. Kaplan made notes of these conversations, and he testified that he believes these notes are generally accurate. According to notes of a discussion on January 4, 2002, Mr. Lavoie stated that the \$300,000 figure mentioned by Mr. Kaplan was wrong; in fact, Mr. Mulroney had received “much less than \$300,000.”²¹⁴ Mr. Lavoie testified that, if he told Mr. Kaplan that the payments amounted to less than \$300,000, he assumed Mr. Mulroney must have advised him of that fact. Mr. Lavoie was certain that he had a conversation with Mr. Mulroney before he told Mr. Kaplan that the amount was less than \$300,000.

Mr. Kaplan testified that he received a variety of explanations from Mr. Lavoie regarding the purpose of the payments. First, the money Mr. Mulroney received was to “assist Mr. Schreiber with his pasta machine.” Second, the money was to be used to lobby for Bear Head. Third, the money pertained to work on behalf of a client, though the matter was governed by solicitor-client privilege. Finally, Mr. Mulroney required the money because of his financial situation.²¹⁵

Mr. Lavoie’s Statements to the Media in 2004

In October 2004 Mr. Lavoie made a number of statements to the media, including those published in two *Globe and Mail* articles, on October 8, 2004, and October 16, 2004.²¹⁶ Certain excerpts from those articles were presented to Mr. Lavoie during his examination before me. Mr. Lavoie confirmed their accuracy and agreed that his mandate from Mr. Mulroney was reflected in them: “The payments were legal, no rules or laws were broken, all income taxes were paid, end of story.”²¹⁷ Mr. Lavoie testified that correcting the \$300,000 figure at the time was not an issue, though he noted that Mr. Mulroney had never told him that the amount was \$300,000.

Mr. Lavoie’s Statements to the Media in 2007

On November 5, 2007, Mr. Lavoie wrote an email to journalist Bruce Champion-Smith, stating that Mr. Mulroney did not reveal the figure of \$300,000 (the *Globe and Mail* published that figure) and that the payments had nothing to do with the Airbus transaction.²¹⁸

Mr. Lavoie explained to Mr. Champion-Smith that the reason for the payments may be found in Mr. Schreiber’s testimony in the Eurocopter proceedings and in Mr. Schreiber’s statement of claim and affidavit. He then summarized Mr. Mulroney’s mandate as involving assistance in building a factory for Thyssen and launching a chain of pasta restaurants. In conclusion, Mr. Lavoie wrote that all the facts stated in the email were those he knew to be “totally true.”²¹⁹

In testimony before the Commission, Mr. Lavoie confirmed, with respect to the excerpts from the email, that he was telling the truth: he referred repeatedly to the sum of \$300,000; he said his statements reflect his characterization of Mr. Mulroney’s

mandate; and he stated that he was not only in contact with Mr. Mulroney at the time but also his spokesperson.

Mr. Lavoie testified that the email was written while he was in Paris on a holiday, and he did not communicate with Mr. Mulroney before sending the email. He drafted the email in the wake of the broadcast of *the fifth estate* on October 31, 2007, after being contacted by Mr. Campion-Smith, who he concluded was not clear on the chronology of events. Mr. Lavoie stated that he thought at the time that he should put the matter in context for Mr. Campion-Smith as objectively as possible.

According to Mr. Mulroney, he had not seen this email before it was presented to him during the Commission hearings. Furthermore, he testified that he was not consulted before or after it was written. He indicated that the portion pertaining to the purpose of the money relating to the construction of a factory is inaccurate. Mr. Mulroney believed that, when Mr. Lavoie stated, “I know all these facts to be totally true,” he (Mr. Lavoie) believed them to be totally true.

According to a third article published in the *Globe and Mail*, “Mulroney-Schreiber Saga” by Campbell Clark and Brodie Fenlon, on November 22, 2007, Mr. Lavoie made statements regarding the cash payments: he specified the sum of \$100,000 for a payment in August 1993 and referred to the pasta business in the reasons for payment.²²⁰ In testimony, Mr. Lavoie confirmed that, in an interview he gave to Canwest News Services on November 21, 2007, he made the quoted statements; he also stated that it was very possible he had mentioned the \$300,000 figure.²²¹

When asked about Mr. Lavoie’s statements quoted in the November 22, 2007, *Globe and Mail* article, Mr. Mulroney testified that the part about the projects “including a military vehicle plant in Montreal and pasta business” was not accurate.²²² He acknowledged that Mr. Lavoie, when making these comments, did not use the \$75,000 figure but rather stated that the retainer was \$100,000 per year. When Mr. Auger, counsel for Mr. Schreiber, asked Mr. Mulroney whether he told Mr. Lavoie in 2007 that the retainer was \$75,000 per year, Mr. Mulroney responded, “At a given point in time I did tell him, yes.”²²³

According to Mr. Lavoie, Mr. Mulroney advised him in the fall of 2007 that the total amount was \$225,000: “Mr. Mulroney told me, ‘By the way, Luc, it’s not 300, it’s 225.’ That was the only time it was put like that, flat out like that.”²²⁴ Mr. Lavoie said that this conversation was extremely brief – it lasted about 30 seconds – and occurred while he was accompanying Mr. Mulroney to an event in Toronto in connection with the launch of his memoirs. Mr. Lavoie testified that he had never asked Mr. Mulroney the exact amount of the payments before that time.

Mr. Lavoie observed that the \$300,000 figure was circulating in the media in 2001, 2003, and 2004 and that he was in regular contact with Mr. Mulroney during those years. In fact, when requests from the media were received by Mr. Mulroney, his secretary would forward the letter to Mr. Lavoie.²²⁵ At no time when the \$300,000

figure was circulating did Mr. Mulroney ask Mr. Lavoie to correct the amount or to declare or announce publicly that the \$300,000 figure was incorrect.

To provide further context, Mr. Lavoie referred to Mr. Kaplan's article from the fall of 2003 in the *Globe and Mail*. He testified that this article reported the \$300,000 amount, even though Mr. Kaplan's notes of their conversation in 2002 indicate that Mr. Lavoie told him the total was less than \$300,000. In Mr. Lavoie's opinion, "in all the confusion, the \$300,000 figure was the one that stuck."²²⁶ Moreover, he continued, "I didn't quite see why it mattered."²²⁷

According to Mr. Lavoie, Mr. Kaplan's article was comprehensive, objective, and did not "try to ascribe motives where none existed."²²⁸ He stated that, if Mr. Mulroney had told him the figure had to be corrected, he would have replied that "would have been a way to make the front page again the next day."²²⁹ Mr. Lavoie remarked that the news was delivered accurately by Mr. Kaplan, so he advised Mr. Mulroney to "let it go," and Mr. Mulroney "apparently" took the advice.²³⁰

Mr. Mulroney's Perspective on the Dealings and His Disclosure

According to Mr. Mulroney, his relationship with Mr. Schreiber was "legal and involved no wrongdoing of any kind at any time on my part."²³¹ Mr. Mulroney regrets, however, that the circumstances surrounding the transactions with Mr. Schreiber, for which he is largely responsible, gave rise to suspicions as to their propriety. He accepted the suggestion by Mr. Wolson that inadequately documented arrangements are inappropriate for former public office holders and that they should be avoided at all times.²³²

When asked by his counsel, Mr. Pratte, why he had sought to keep the transactions private, Mr. Mulroney cited some background as context for his actions. He described the purchase of the Airbus planes by Air Canada, the related allegations of corruption, the RCMP investigation into the purchase, and rumours and innuendo that were nurtured by author Stevie Cameron in her books and by *the fifth estate*. Mr. Mulroney referred to the letter of request, "in which they said I was a criminal,"²³³ and the informants used by the RCMP when the letter was prepared – Ms. Cameron and Giorgio Pelossi, "a convicted felon."²³⁴ (I pause to note that, at one point, Mr. Pelossi had been Mr. Schreiber's accountant.) Mr. Mulroney stated that, when he challenged the RCMP and the Government of Canada, they sought a settlement on "the day of the trial," acknowledged they "had no evidence" to "sustain their libelous accusations," and apologized to him and his family.²³⁵ According to Mr. Mulroney, the

enormity of those events scarred me and my family for life and it explains my conduct in trying to keep private the private commercial transaction I entered into with Mr. Schreiber after I left office – after I left office – so as to avoid the same kinds of

deceitful and false purveying of information that had led to the original Airbus matter in the first place.²³⁶

Mr. Mulroney testified that his subsequent events were “legitimate attempts to keep my private life private, and that of my family.”²³⁷

Mr. Wolson asked Mr. Mulroney to confirm that he had long ago had the opportunity to make public his relationship with Mr. Schreiber but did not do so. Mr. Mulroney responded that he was not obliged to call a press conference and tell people what he had done in the private sector.

Mr. Mulroney confirmed that he did not come forward when Mr. Lavoie had suggested he should, though, as noted earlier, he acknowledged that he should have followed his advice. Mr. Mulroney pointed out that Mr. Lavoie also testified that he understood why Mr. Mulroney had failed to make the payments public, given the manner in which the information would be “distorted and used against me and my family.”²³⁸

Mr. Wolson referred Mr. Mulroney to Mr. Kaplan’s article of November 10, 2003, which publicized the payments. He suggested to Mr. Mulroney that he could have come forward earlier. Mr. Mulroney responded that Mr. Kaplan had already told “the entire story, essentially what we know today.”²³⁹

When pressed by Mr. Wolson, Mr. Mulroney acknowledged that he had not held a press conference at the time of the publication of Mr. Kaplan’s article to explain his private arrangement with Mr. Schreiber, the terms of the arrangement, and the work he performed pursuant to that arrangement. However, he agreed that he had confirmed those facts to Mr. Kaplan, which enabled him to write the article. Mr. Mulroney testified that he acknowledged to Mr. Kaplan the existence of the transaction, the cash payments, the sum being less than \$300,000, and the contract being one for professional services to be rendered. He also stated that he informed Mr. Kaplan that the agreement was “above board in all respects ... and that not a nickel of public funds was involved in any way.”²⁴⁰

Mr. Wolson then referred Mr. Mulroney to his speech of November 13, 2007, at St. Francis Xavier University and to his statements that he would be before a Commission with “bells on,” that he had done nothing wrong, and that he had absolutely nothing to hide. Mr. Mulroney said he now admits he had done something wrong – namely, failing to document a cash transaction. He testified that the circumstances of the transaction and its “significantly undocumented manner could give rise to a situation where reasonable people might conclude that something was amiss.” However, he continued: “Nothing was amiss, as I think we have established, but I acknowledge readily that that was unwise.”²⁴¹

On further questioning by Mr. Wolson, Mr. Mulroney acknowledged that he made neither a formal statement admitting that he and Mr. Schreiber had a business deal, which was private and involved payments of \$225,000, nor one stating he had worked for Mr. Schreiber on an international basis, consisting of his attendance in China,

Russia, France, and the United States. Mr. Mulroney repeated that he had confirmed “the essence of this story,” as published in Mr. Kaplan’s article of November 10.²⁴²

Mr. Mulroney said that Mr. Kaplan’s article contained the facts that he (Mr. Mulroney) enunciated and that he had confirmed most of those facts for Mr. Kaplan. He continued: “So I felt that the matter, to the extent the public was entitled to know things, I thought a lot of it was there and I felt that I had done what I ought to do in those circumstances.”²⁴³ Mr. Mulroney acknowledged that he had not made a formal statement such as the ones he made before the Commission, though he stated again that he was not required to do so. Mr. Mulroney noted that, while he was under oath before the Commission, Mr. Kaplan was a journalist writing a story.

Mr. Mulroney acknowledged that the Commission might not have been held had he made a formal statement. But then he said he was unsure that a statement would have precluded the Commission because certain members of the media were “hell-bent on making certain ... that some significant degree of wrongdoing exists.”²⁴⁴ Mr. Mulroney maintained that no wrongdoing has been found and that none will ever be found, because “I have never in my life knowingly done anything wrong.”²⁴⁵

Mr. Kaplan’s Interactions with and Interviews of Mr. Mulroney

Mr. Kaplan, a lawyer and legal historian, wrote two books regarding Mr. Mulroney: *Presumed Guilty: Brian Mulroney, the Airbus Affair and the Government of Canada* (1998) and *A Secret Trial: Brian Mulroney, Stevie Cameron, and the Public Trust* (2004).²⁴⁶ While researching *Presumed Guilty*, Mr. Kaplan carried out a number of interviews of Mr. Mulroney, Mr. Schreiber, Mr. Lavoie, and others. During this research, he had unprecedented and unlimited access to Mr. Mulroney’s files as well as Mr. Mulroney’s co-operation. Mr. Mulroney also spoke to Mr. Kaplan many times while he was preparing a series of three articles for the *Globe and Mail* which was ultimately published in November 2003.

Mr. Kaplan’s interview notes were made an exhibit during the Commission hearings. Mr. Kaplan appeared before the Commission and answered questions about those interviews and what Mr. Mulroney and the others told him. Because of the unique perspective these interviews provided Mr. Kaplan, I am including a detailed review of what he was told and his evidence before the Commission.

With regard to *Presumed Guilty*, Mr. Mulroney confirmed that Mr. Kaplan at one point told him he was upset with the way he (Mr. Mulroney) had been treated (in relation to the Airbus allegations) and that, as a historian, he wanted to set the record straight. Mr. Mulroney believes that, when Mr. Kaplan was writing his book, he gave him access to his counsel and those who were knowledgeable about the letter of request and the ensuing lawsuit. He agreed that Mr. Kaplan did defend his reputation in the book.²⁴⁷

When Mr. Wolson asked whether he thought it would have been important to tell Mr. Kaplan about the commercial relationship with Mr. Schreiber, Mr. Mulroney noted that “the book that Mr. Kaplan proposed to write dealt with the Airbus matter.”²⁴⁸ Mr. Mulroney testified that he was happy to deal with Mr. Kaplan on the Airbus matter, and that he dealt with him truthfully.

Mr. Mulroney believes that, over the course of their dealings related to the publication of *Presumed Guilty*, Mr. Kaplan never asked him about a commercial relationship with Mr. Schreiber. When asked to confirm that, in his view, he had not deceived Mr. Kaplan or attempted to put his relationship with Mr. Schreiber in a better light, Mr. Mulroney’s response was that he had not.

Mr. Mulroney agreed that, unlike in the examination before plea, he did not have to stay within the parameters of the statement of claim when he was talking to Mr. Kaplan.²⁴⁹ Mr. Mulroney said that, if Mr. Kaplan had asked him about a commercial relationship, he “would have been truthful with him.” Mr. Wolson pointed out to Mr. Mulroney that Mr. Kaplan, like Claude-Armand Sheppard did not know of the commercial relationship between Mr. Schreiber and Mr. Mulroney. Mr. Wolson also pointed out that Mr. Mulroney had told Mr. Kaplan that he (Mr. Mulroney) knew Mr. Schreiber only in a “peripheral” way.

Mr. Mulroney was referred to Mr. Kaplan’s notes from an interview dated October 12, 2003. The notes record that Mr. Mulroney stated:

Don’t forget that I am the one who sued the Government of Canada. I was fully aware that in the Province of Quebec they have the right to interrogate you on discovery before production of a plea. I knew that my full life was open for an interrogation.²⁵⁰

Mr. Mulroney said that he “[v]ery probably” made that statement to Mr. Kaplan. However, he noted it was made “[w]ithin the parameters of the *Code of Civil Procedure* of Quebec.”²⁵¹ According to Mr. Mulroney, this remark to Mr. Kaplan was made “within the confines of the examination before plea.”

In response to the suggestion by Mr. Wolson that the quotation does not contain any reference to Mr. Mulroney’s qualifier, Mr. Mulroney stated that it was “very implicit that that is the case.”²⁵² He continued that Mr. Kaplan “may not have fully appreciated the importance of the nuance because he is a common law lawyer and this is unique to the *Civil Code* [sic] in the Province of Quebec. I don’t blame him for that at all.”

MR. KAPLAN’S PERSPECTIVE ON MR. MULRONEY’S DISCLOSURE

In his testimony before the Commission, Mr. Kaplan stated that, while he cannot remember exactly when he began writing *A Secret Trial*, he believes it was in 2004, though it could have been in 2003 after his article that November in the *Globe and Mail*.²⁵³ Mr. Wolson asked Mr. Kaplan why he wrote *A Secret Trial*. According to Mr. Kaplan, his first book (*Presumed Guilty*) was a defence of Mr. Mulroney in

which he “determined that he [Mr. Mulroney] was, based on the evidence that was then available, a victim of a miscarriage of justice.”²⁵⁹ Mr. Kaplan remarked that he concluded that the letter of request had been unfair to Mr. Mulroney, and that Mr. Mulroney had been defamed by the document and the process that followed.

Mr. Kaplan observed that he was not the only one who reached that conclusion. He stated that the Government of Canada came to the same conclusion and apologized to Mr. Mulroney,²⁵⁵ acknowledging the absence of evidence of wrongdoing on Mr. Mulroney’s part. Mr. Kaplan remarked that *the fifth estate* had no information indicating wrongdoing by Mr. Mulroney. He noted that Justice Gold, who presided over the arbitration to assess the amount of legal and public relations fees to be awarded to Mr. Mulroney, said that Mr. Mulroney “was the victim of a grievous injustice.”²⁵⁶

According to Mr. Kaplan, however, the cash payments to Mr. Mulroney “changed everything,” and he felt obliged, as a historian of the Airbus affair, to “set the record straight.”²⁵⁷ Mr. Kaplan stated:

I felt that it was my professional and moral obligation, as an historian of the Airbus affair who had written an exculpatory book about Mr. Mulroney castigating his enemies and finding that he was a victim of a serious injustice, to correct the record insofar as there was new information indicating that the person he was alleged to have been involved in a conspiracy with had paid him cash in hotels and he had not told the Canadian people about it.²⁵⁸

INTERVIEWS OF MR. MULRONEY

Mr. Kaplan conducted several interviews of Mr. Mulroney and of others, including Messrs. Schreiber, MacAdam, and Lavoie. He made notes of their content either during the interviews or afterwards.

Mr. Kaplan believes that his notes are generally accurate. He testified that he “was aware of the importance of the matters that I was investigating to everybody. I was also aware of the possibility of subsequent litigation, and I made my best efforts to ensure the notes were accurate.”²⁵⁹ Mr. Kaplan confirmed that his notes represent an accurate account of his conversations with Mr. Mulroney as well as those with Mr. Lavoie and Mr. Schreiber.

With regard to his interviews of Mr. Mulroney in connection with the first book, *Presumed Guilty*, Mr. Kaplan testified that he found Mr. Mulroney likeable, courteous, intelligent, and friendly, and he indicated that he had a very good rapport with him. Mr. Kaplan noted that, when he began to write his second book, *A Secret Trial*, they no longer enjoyed a cordial relationship.²⁶⁰

Interview of Mr. Mulroney, December 2, 1997

As part of his research for *Presumed Guilty*, Mr. Kaplan interviewed Mr. Mulroney on December 2, 1997, at Mr. Mulroney's home. Mr. Kaplan described the interview as "wide-ranging," spanning several hours.²⁶¹

According to Mr. Kaplan's notes, Mr. Mulroney told him:

I knew Schreiber in a peripheral way. He was associated in my mind with the Alberta Progressive Conservatives. That was the limited extent to which I knew anything about him, I knew who he was, and that he'd been involved in Bear Head ...

Schreiber was involved in Bear Head. I knew that because I had correspondence with him and I met him. I know that he was trying to do the deal. But I have no knowledge that he was involved in any way with Airbus.²⁶²

Mr. Kaplan testified that, on the basis of the research he had performed until that point, he was satisfied that the first part of the above statement was factually accurate. He said that Mr. Mulroney's comment that he knew Mr. Schreiber in a peripheral way was consistent with his reading of Mr. Mulroney's testimony at the examination before plea.²⁶³ Mr. Kaplan agreed that the remark did not cause him any concern, and they spent little time discussing it.

Mr. Kaplan's Perspective Regarding the Peripheral Relationship and Mr. Mulroney's Subsequent Disclosure

Mr. Kaplan said he spent the better part of a year writing *Presumed Guilty*, which defended Mr. Mulroney and criticized others.²⁶⁴ He believes he was "duped" by Mr. Mulroney: Mr. Mulroney's relationship with Mr. Schreiber was not peripheral, as Mr. Mulroney had told him; rather, they had a commercial relationship, and Mr. Schreiber "had been part of the Mulroney circle even before he [Mr. Mulroney] entered public life."²⁶⁵

Mr. Wolson asked Mr. Kaplan whether, while he was writing *Presumed Guilty*, he ever asked Mr. Mulroney if he had received money from Mr. Schreiber. Mr. Kaplan said he had not done so and gave five reasons for this omission: first, in response to the letter of request, which accused Mr. Mulroney of engaging in a criminal conspiracy involving three separate transactions, Mr. Mulroney sued the Government of Canada and claimed that "he never received any of the alleged payments, including the Bear Head payments ... 'in any form, from any person'";²⁶⁶ second, an article in the *Globe and Mail*²⁶⁷ quoted Harvey Yarosky, Mr. Mulroney's lawyer, as stating on November 18, 1995, that Mr. Mulroney never received a cent from anyone; third, Sam Wakim, another of Mr. Mulroney's lawyers, told the CBC that "Mulroney never met this Schreiber guy. Mulroney doesn't even know Schreiber. Moores may have brought Schreiber to a party, but that's all";²⁶⁸ fourth, Mr. Mulroney testified at the examination before plea to the effect that "he knew him [Mr. Schreiber] very casually, that he had met him for coffee once or twice, and that was it. Those were his words 'that was it'";²⁶⁹ and fifth,

Mr. Mulroney told Mr. Kaplan at an interview on December 2, 1997, that he knew Mr. Schreiber peripherally. Mr. Kaplan said that, for these reasons, “it was inconceivable to me that Mr. Mulroney was at the time, in 1993 and 1994, meeting Mr. Schreiber in motels and taking cash payments from him.”²⁷⁰ In response to questions by Mr. Pratte, Mr. Kaplan described the way he felt he was duped:

What I was duped about, sir, and I say this with some embarrassment, is believing Mr. Mulroney when he told me that he had no relationship with Mr. Schreiber. I was duped by believing the Statement of Claim, maybe not reading it as technically as I should have. I was duped by Mr. Yarosky, by Mr. Wakim, by Mr. Lavoie, by all sorts of people who claimed that these two guys didn’t know each other when they were squirrelled away in a motel handing over cash.

So yes, sir, was I duped? Do I have a criticism about that? Yes, sir, I do, and the criticism is that if you are the Prime Minister of Canada, you have a public trust and that means when questions are asked about your conduct before, during or after you are a Prime Minister you come forward, you answer those questions, you leave out no details, and you let the Canadian people decide whether you acted improperly. That is my one and only criticism of Mr. Mulroney.²⁷¹

When asked by Mr. Pratte whether he believed that the relationship was not peripheral because Mr. Schreiber was “closer to the centre of the circle,”²⁷² Mr. Kaplan responded: “I would say, Mr. Pratte, that anyone who accepts \$300,000 in cash in motels from someone to do I don’t know what, does not have a peripheral relationship with that person.”²⁷³

Mr. Kaplan expanded on why the relationship between Mr. Mulroney and Mr. Schreiber could not be classified as peripheral:

What cannot make it peripheral is a former Prime Minister of Canada meeting with someone he had dealt with in an official capacity, one month after he stepped down from being Prime Minister, while he was still a Member of Parliament, meeting him in a motel, taking \$100,000 in cash, taking another \$100,000 in cash at a subsequent meeting at the Queen Elizabeth Hotel, taking a third \$100,000 in cash in New York City, not declaring the income in the year in which it was received, as required by CRA, not telling the Canadian people about it, sending his lawyers and spokespeople out to convince all of us, including me, that there was nothing to do with Schreiber, and then not providing a proper explanation about what the money was for and what the services were that he provided.

That is my criticism.²⁷⁴

Mr. Kaplan noted:

What I do say, and what I continue to say – and you and I, I suppose, will disagree about this forever – is that when Mr. Mulroney was suing the Canadian people for \$50 million for saying that he had had an improper business relationship with Mr. Schreiber he should have told us that he was taking cash in motels from

Mr. Schreiber at that very time and that he wasn't declaring the income to CRA. That's what I say. That's my one modest criticism of Mr. Mulroney.²⁷⁵

Mr. Kaplan agreed that he had "not seen any evidence whatsoever ... indicating that Mr. Mulroney did anything wrong while he was Prime Minister with respect to his relationship with Mr. Schreiber and Mr. Moores and Mr. Doucet."²⁷⁶

Mr. Kaplan provided other examples that he stated exhibited the careful phrasing by Mr. Mulroney's counsel and spokespeople to mislead the Canadian people. He cited Mr. Lavoie's remark that Mr. Mulroney "had nothing improper to do with Bearhead [sic]," and Mr. Lavoie's remarks to Mr. Kaplan regarding the purpose of the payments to Mr. Mulroney.²⁷⁷

With reference to the conversation he had with Mr. Lavoie on January 4, 2002,²⁷⁸ wherein Mr. Lavoie stated that "[t]he truth was that Mulroney had nothing to do with Airbus, he [had] nothing to do with MBB [Messerschmitt-Bolkow-Blohm GmbH helicopters] and he had nothing improper to do with Bearhead [sic]," Mr. Kaplan stated that Mr. Lavoie's remark left the impression that Mr. Mulroney "had nothing to do with anything when in fact the truth is quite different."²⁷⁹

Mr. Pratte suggested that Mr. Lavoie was stating that Mr. Mulroney had nothing improper to do with Bear Head, thereby acknowledging his involvement with Bear Head. Mr. Kaplan agreed, though he stated that Mr. Lavoie's words were carefully chosen to mislead Mr. Kaplan and the Canadian people about Mr. Mulroney's relationship with Mr. Schreiber.

Mr. Pratte identified the letter of request and the statement of claim as the "first leg" of Mr. Kaplan's explanation to Mr. Wolson for not asking Mr. Mulroney whether he had a commercial relationship with Mr. Schreiber. Mr. Kaplan agreed with Mr. Pratte's suggestion.²⁸⁰

When asked by Mr. Pratte whether the statement of claim mostly focused on the allegation that secret commissions were paid to Mr. Mulroney as a result of the purchase of Airbus planes by Air Canada, Mr. Kaplan indicated that he did not know, but he noted that Mr. Mulroney's lawsuit had a "preoccupation" with that allegation. After Mr. Pratte referred him to specific excerpts of the letter of request and the statement of claim, Mr. Kaplan agreed that the allegation in respect of Bear Head dealt with a conspiracy to defraud the Canadian government during Mr. Mulroney's term as prime minister. He also agreed that the statement of claim denied the allegation that, while Mr. Mulroney was prime minister, he received payments with respect to Bear Head. In particular, he acknowledged that the allegations related to Bear Head focused on a conspiracy when Mr. Mulroney was prime minister, and that those allegations were the basis of Mr. Mulroney's lawsuit.

When asked to confirm that the statement of claim did not contain a denial that was in any way broader than that, while Mr. Mulroney was prime minister, he participated in a conspiracy to defraud the Canadian government, Mr. Kaplan agreed.

but he also stated, “[I]t is all part of a pattern of carefully chosen words.”²⁸¹ After Mr. Kaplan provided that answer, Mr. Pratte suggested “[w]ords are important, sir, and I think you have agreed with me that the claim was denying the payments and the conspiracy, as alleged, and no more than that.”²⁸² Mr. Kaplan agreed.

Mr. Kaplan agreed with Mr. Pratte’s suggestion that the November 20, 1995, *Globe and Mail* article containing remarks made by Mr. Yarosky was the “second leg” of his explanation to Mr. Wolson for not asking Mr. Mulroney whether he had a commercial relationship with Mr. Schreiber.²⁸³ Mr. Kaplan was then referred to the paragraph within which Mr. Yarosky’s remarks are found:

On Saturday, Harvey Yarosky, a member of a legal team retained by Mr. Mulroney, said the “former prime minister categorically ... states that he had absolutely nothing to do with Air Canada’s decision to buy Airbus ... Nor did he receive a cent from anyone. He was simply not part of any conspiracy whatsoever.”²⁸⁴

When asked if he agreed that Mr. Yarosky’s remarks about Mr. Mulroney not receiving a cent from anyone were limited to Airbus and Air Canada, Mr. Kaplan stated, “Well, I agree it’s in that paragraph, but I don’t agree that it’s as narrow as you suggest.”²⁸⁵ According to Mr. Kaplan, “whether knowingly or not, the impression that was intended to convey was that Mr. Mulroney had received no money from Mr. Schreiber or Mr. Moores, and that is the impression that it, in fact, did convey.” Mr. Kaplan later stated that “[n]o fair-minded person could read this article and conclude anything other than [that] Mr. Yarosky was telling them that Mr. Mulroney didn’t receive a nickel from anyone.”²⁸⁶

Later, while questioning Mr. Kaplan, Mr. Pratte suggested that the limited context of Mr. Mulroney’s action was defined by the letter of request and the statement of claim, Mr. Kaplan agreed and continued:

I have agreed with you, sir, that that was the limited context of the action. I do not agree with you, sir – and you can call me old-fashioned – that when a Prime Minister sues the Government of Canada for \$50 million for saying that he had taken commissions in an illegal conspiracy, that he shouldn’t go on to reveal that he had also taken cash in motels.²⁸⁷

... It is quite clear now, especially in hindsight ... that the Statement of Claim is carefully limited in time. Now that we know about the cash payments, it would have to be, wouldn’t it?²⁸⁸

When Mr. Pratte then suggested that the statement of claim could not be broader than the allegations in the letter of request, Mr. Kaplan responded, “I have no idea, sir.”²⁸⁹

With reference to Mr. Mulroney’s responses to Mr. Kaplan’s direct questions regarding the payments, Mr. Kaplan confirmed in his testimony that, while Mr. Mulroney did not deny receiving payments, he disputed the amount he received from the “get-go” and admitted to the payments when Mr. Kaplan asked.²⁹⁰ Mr. Kaplan noted that Jacques Jeansonne, another of Mr. Mulroney’s lawyers, and Mr. Lavoie also “agreed that Mr. Mulroney was paid by Mr. Schreiber.”²⁹¹

According to Mr. Kaplan, Mr. Mulroney had a moral obligation, given that he had sued the Government of Canada for alleging that he was involved in a criminal conspiracy with Mr. Schreiber and Mr. Moores, to disclose his involvement with Mr. Schreiber and the fact that he had received cash payments from him in hotel rooms and that he had failed to declare it on his income tax for several years. Mr. Kaplan testified:

I do believe he had an obligation, because of the public trust he enjoyed as Prime Minister, to be fully forthcoming.

Moreover ... you can accuse me of being old-fashioned, but I believe that when someone is Prime Minister, the public trust doesn't just involve their activities when they are Prime Minister but it involves their activities before they are Prime Minister [and] after [they are] Prime Minister. And they can't rely on the legal technicalities that are open to ordinary litigants who appear before our courts.

I think, sir, that they should come forward and tell the Canadian people everything and let the Canadian people, Mr. Pratte, decide whether their behaviour is appropriate or not.²⁹²

Mr. Mulroney's Perspective Regarding the Peripheral Relationship and His Subsequent Disclosure

With regard to Mr. Kaplan's reasons as to why the relationship between Mr. Mulroney and Mr. Schreiber cannot be viewed as peripheral, Mr. Mulroney stated that some elements of Mr. Kaplan's position are "no doubt accurate" while others are inaccurate. According to Mr. Mulroney, Mr. Kaplan "does not accept the view that most lawyers and people of law in Canada would accept[,] that your responsibility is to answer questions in court that you were asked and not answer questions that you were not asked."²⁹³ Mr. Mulroney remarked that Mr. Kaplan had taken the position that one has the obligation to volunteer information because one has served as prime minister.

According to Mr. Mulroney, his remark to Mr. Kaplan that he knew Mr. Schreiber in a peripheral way is a true statement, given the context of the question. He believed that "the context of the question was the nature of personal relationships."²⁹⁴ He stated that he answered within that context, not in an attempt to mislead. Later in his testimony, when asked whether his statement to Mr. Kaplan regarding the peripheral relationship was true, Mr. Mulroney testified "[v]ery probably ... I don't know what the – what the question was. It doesn't indicate here what the question was ... So I don't know the extent to which the context might apply."²⁹⁵

Mr. Wolson asked Mr. Mulroney whether his relationship with Mr. Schreiber was considered peripheral even though he had entered into an agreement with him where thousands of dollars were exchanged. According to Mr. Mulroney, the relationship was still peripheral, and he explained that "you can have clients or partners or investors who you do business with, but you might know them in a less than intimate or friendly manner."²⁹⁶ Mr. Mulroney confirmed that he used the term peripheral in a relative

sense – that, relative to other people with whom he dealt on a regular basis and relative to his family, his friendship with Mr. Schreiber was peripheral.

When asked by Mr. Wolson whether he believes that a prime minister must regard the public trust when he is prime minister, Mr. Mulroney testified “Absolutely.”²⁹⁷ Mr. Mulroney also agreed that a prime minister must consider the public trust shortly after leaving office, and he added that this was the basis of his refusal to accept a mandate to lobby the Government of Canada or to do any business with the Government of Canada, the Government of Quebec, or any provincial government or municipality. Further, Mr. Mulroney agreed that there is an issue of public trust for a prime minister out of office, “[b]ut,” he said, “I think it is governed to some extent by convention and/or comments, commentary and/or rules and regulations that might exist.”²⁹⁸

Interview of Mr. Mulroney, January 9, 2002

Mr. Kaplan was referred to an interview that he conducted with Mr. Mulroney on January 9, 2002.²⁹⁹ According to Mr. Kaplan’s notes, the interview occurred when he received a telephone call from Mr. Mulroney, which he said came as no surprise given an earlier discussion he had had with Mr. Lavoie.³⁰⁰ In this interview, Mr. Kaplan expressed dismay at Mr. Lavoie’s explanation that Mr. Mulroney never deceived him.³⁰¹ In reply, according to Mr. Kaplan’s notes, Mr. Mulroney stated:

To the best of my recollection, during my entire life, I have never done anything wrong, unethical or illegal. I don’t want to involve you needlessly and I would be happy to see you to discuss this when I get to Toronto. What I can tell you now, is that I have had poor judgment from time to time as Prime Minister. Being introduced to KHS by Elmer McKay [sic] and Fred Doucet, is one of the biggest mistakes that I regret the most. I know Schreiber peripherally. If I had my druthers I would never have seen a guy like that. I was told that he was a prominent business person from Alberta trying to sell a legitimate and lawful piece of equipment.

If you accumulated all the sorrow over all my life, it does not compare to the agony and anguish that I have gone through since I met Schreiber.³⁰²

The notes also reflect that, in the course of the phone call, they discussed Mr. Kaplan’s view that he was misled by Mr. Mulroney respecting certain issues. In response, Mr. Mulroney said that these issues were “often matters of context and nuance.”³⁰³

Mr. Mulroney’s Perspective

With reference to Mr. Kaplan’s notes of the telephone call on January 9, 2002, Mr. Mulroney confirmed that he called Mr. Kaplan and told him that, “to the best of my recollection, during my entire life, I have never done anything wrong, unethical or illegal.”³⁰⁴ He also confirmed that he told Mr. Kaplan that he had “declared every cent that I have ever received and I have paid all income tax on all monies owing.”³⁰⁵

Interview of Mr. Mulroney, December 4, 2002

Mr. Kaplan was referred to the following notes he made from a meeting he had with Mr. Mulroney on December 4, 2002:³⁰⁶

[H]e [Mr. Mulroney] told me the following: when he joined Ogilvy Renault he made it clear that he would have an independent international consulting practice. He has had such a practice. The names of his clients are confidential and will not be released without their permission. If, and he emphasized the word if, a client paid him in cash, that would be reflected in the books of the company and all taxes have been paid, all income declared. I asked him what he would have said if he had been asked whether he got any money from Schreiber when he was under oath. He said that he would have told the truth.³⁰⁷

Mr. Kaplan confirmed the above-referenced passage. He testified that when he asked Mr. Mulroney what he would have said had he been asked whether he received any money from Mr. Schreiber, he was referring to the examination before plea.

Mr. Mulroney's Perspective

Mr. Mulroney confirmed that he told Mr. Kaplan that he had an independent international consulting practice wherein the names of his clients are confidential and are released only with their permission. When asked by Mr. Wolson whether the transaction he entered into with Mr. Schreiber was recorded in his company's books, Mr. Mulroney testified that it was not. He said, "I believed it was at the time [of Mr. Kaplan's interview], and this conversation, I think, took place approximately ten years later, and that was an inadvertently inaccurate statement on my part."³⁰⁸

At the time of the interview, Mr. Mulroney knew full well, first, that the money was never recorded and, second, that it had sat in a safe in his home and in a safety deposit box in New York. I believe Mr. Mulroney's statement to Mr. Kaplan was purposely misleading and was not made through inadvertence.

Interview of Mr. Mulroney, September 12, 2003

Mr. Kaplan was referred to the interview he conducted with Mr. Mulroney on September 12, 2003, in which the following exchange took place:

Q: You are at risk?

A: I am not at risk anymore. Anyone who says anything about that will be in [one] F*** of a fight. They will be confronted by the truth. I can tell you who is at risk and it is not me.³⁰⁹

Mr. Kaplan confirmed that the above-cited passage accurately reflects what Mr. Mulroney told him.

Interview of Mr. Mulroney, October 5, 2003

Mr. Kaplan was referred to the interview he conducted with Mr. Mulroney on October 5, 2003.³¹⁰ He confirmed that, by October 5, 2003, he had told Mr. Mulroney that he was going to write an article about the Eurocopter trial as well as his (Mr. Mulroney's) transactions with Mr. Schreiber.

According to Mr. Kaplan, during this interview Mr. Mulroney indicated that he intended to approach Prime Minister Paul Martin to ask for a new investigation and a royal commission of inquiry into his relationship with Mr. Schreiber. Mr. Kaplan confirmed that Mr. Mulroney stated: "I plan to tell Martin that this is the only thing that will clarify it all."³¹¹

Mr. Mulroney raised another issue with Mr. Kaplan during the interview, stating it "has to do with the other matter that you know about. I want you to know that it is not going anywhere."³¹² Mr. Kaplan testified that the "other matter" was the cash payments from Mr. Schreiber. Mr. Mulroney told Mr. Kaplan that the income had been declared, the matter had been thoroughly investigated, and he was "clean as a whistle" – as concluded by the RCMP.³¹³ Mr. Kaplan's notes include the following excerpt:

This thing involving Schreiber, someone told that to the RCMP and they investigated that and they concluded that it was all clean as a whistle. That was the final thing they were investigating prior to giving me the apology letter in April [2003].³¹⁴

Mr. Kaplan then informed Mr. Mulroney, as recorded in the notes, that he had never been entirely satisfied with the explanation Mr. Mulroney provided regarding his relationship with Mr. Schreiber.³¹⁵ Mr. Mulroney replied that his "responses were absolutely accurate": he had "responded specifically to their questions during the examination on discovery" and "gave them a full answer."³¹⁶ Mr. Kaplan's notes indicate that Mr. Mulroney also said:

Not one of them asked me, let's move ahead a number of months, you are out of office, you are trying to get yourself established, not one of them explored my post prime-ministerial life. Had they done so, I would have given them an absolutely truthful answer. Consider this: would I go into a 2 day examination on discovery that I brought about, through a civil suit that I initiated with anything untoward in my past? Christ, there were 21 of them sitting there, I would have answered any questions put forward.³¹⁷

Mr. Kaplan then noted that he suggested the following to Mr. Mulroney: "The Mathias report [by journalist Philip Mathias in the *National Post*] indicates that Karl Heinz [sic] Schreiber gave you money, that is not defamatory there is nothing for him to worry about in a courtroom."³¹⁸ Mr. Mulroney responded, "What Mathias seems to know is mostly false. It is a much larger story. The money came to Britan. This money was not for me." He said that he was not Britan and indicated that,

while he knew who Britan was, which was a “big story,” it was not relevant to his role.³¹⁹ Mr. Mulroney stated that Britan was not “immediately germane to the thing we are talking about but I can tell you that it is mind boggling.” During Commission proceedings, Mr. Kaplan confirmed that the “thing” to which Mr. Mulroney referred was the cash payments.

According to Mr. Kaplan, Mr. Mulroney from the “get-go” disputed the allegation that the payment consisted of \$300,000; however, he never provided Mr. Kaplan with a specific figure. Mr. Kaplan also confirmed that, when he asked Mr. Mulroney about the cash payments after learning of them from Mr. Mathias, Mr. Mulroney did not deny the payments.

Mr. Mulroney’s Perspective

With reference to his contention during the interview that “[w]hat Mathias seems to know is mostly false,”³²⁰ Mr. Mulroney acknowledged that what he was referring to in making this statement was Mr. Mathias’s purporting that he received \$300,000 from Mr. Schreiber from the Britan account.

Mr. Mulroney believes he first heard of the Britan account in 1999. He thinks he was made aware of its existence because Mr. Mathias wrote a story on the morning of the day *the fifth estate* later broadcast a program stating that Britan was a code name for Brian and that he would have been paid from the Britan account. According to Mr. Mulroney, “I knew nothing about it, but I did find out – I did see that very day [that] Mr. Edward Greenspan, Mr. Schreiber’s lawyer, wrote to *the fifth estate*.”³²¹ In paraphrasing that letter, Mr. Mulroney indicated that Mr. Greenspan advised *the fifth estate* that the Britan account was unrelated to Mr. Mulroney.³²²

At the suggestion by Mr. Wolson that Mr. Mulroney knew only what Mr. Greenspan had said in the letter and that he had no independent thought on the matter, Mr. Mulroney stated, “I think I have told you that I never did ... [a]nd don’t to this day.”³²³ When subsequently asked who he understood Britan to be, Mr. Mulroney stated that he was advised that “Britan was simply Breton ... and that the matter was set aside for a leading figure in Breton, in Cape Breton.”³²⁴

Mr. Mulroney also downplayed the significance of the information about the payments. He testified that “[t]here was nothing new in this,” because Mr. Mathias knew that Mr. Mulroney had received money from Mr. Schreiber. Mr. Mulroney also noted that Mr. Mathias had spoken about it and prepared a draft for the *National Post* three or four years earlier.³²⁵ Mr. Wolson suggested to Mr. Mulroney that the information regarding the payments was new because it had not been published. Mr. Mulroney answered that, while it was not published, “it was rather widely known in certain circles in Toronto.”

Ultimately, Mr. Mulroney explained his statement that Mr. Mathias’s knowledge was false on two bases: first, \$300,000 was false; and, second, the main thrust of the

article was that the money came from the Britan account, which the “Schreiber parties have already denied ... at this point in time.”³²⁶ Mr. Mulroney testified, “[A]s reported to me, the Mathias article is largely false. That’s all I’m saying. But when Mr. Kaplan asks me the specific question, I tell him the truth.”

Interview of Mr. Mulroney, October 12, 2003

Mr. Kaplan was referred to the interview he conducted on October 12, 2003, with Mr. Mulroney. According to Mr. Kaplan’s notes, Mr. Mulroney began the relevant discussion with the following question, “I got the impression that you plan to write about Karl Heinz [sic] Schreiber and me?” Mr. Kaplan advised Mr. Mulroney that the relationship would be part of the story, and Mr. Mulroney disagreed, saying: “It is not part of the story at all. It is a different story.”³²⁷ He reminded Mr. Kaplan of what he had said during their earlier discussions – that he had “never done anything wrong or been involved with anyone for any improper purpose,” and that the matter had been fully examined by the RCMP.³²⁸

During the course of this discussion, Mr. Mulroney reminded Mr. Kaplan that he had sued the Government of Canada, with the understanding that he could be subject to interrogation:

Don’t forget that I am the one who sued the Government of Canada. I was fully aware that in the Province of Quebec they have the right to interrogate you on discovery before production of a plea. I knew that my full life was open for an interrogation.³²⁹

At this stage of the interview, Mr. Kaplan advised Mr. Mulroney that two issues existed: first, the allegation that Mr. Schreiber paid him \$300,000 on four separate occasions; and, second, the transcript of the examination before plea, in which Mr. Mulroney did not indicate a commercial relationship with Mr. Schreiber. Mr. Mulroney responded in the following manner:

All that is false. His reading of it might give him that impression but the transcript is fine. Regarding the money, I can tell you that there would be enough inaccuracy in what was just said to maintain a lawsuit. I will tell you what I have told you before, everything that I have done is completely honest and above board. Before, during and after political life.³³⁰

Mr. Mulroney also told Mr. Kaplan, “I can give you a personal guarantee that everything I did with anyone was looked at by the RCMP.”³³¹ He also stated that the RCMP “were aware of any transactions that I did after I left office. I am asking you to keep this between you and me. Keep it as a Chinese wall.”³³² According to the notes, Mr. Mulroney’s final statement, with regard to this discussion, was that everything contained within the transcript of the examination before plea is “completely accurate.”³³³

Mr. Mulroney's Perspective

With reference to his statement to Mr. Kaplan that “there would be enough inaccuracy in what was just said to maintain a lawsuit,”³³⁴ Mr. Mulroney indicated that the “principal inaccuracy” concerned the amount of cash that he had received, which was \$225,000 rather than \$300,000; and the number of occasions on which he received payments from Mr. Schreiber, which was three rather than four.³³⁵

Mr. Wolson asked Mr. Mulroney whether he told Mr. Kaplan, when he stated that there was “enough inaccuracy to maintain a lawsuit,” that the amount was \$225,000, rather than \$300,000, and that he was paid on three occasions rather than four.³³⁶ Mr. Mulroney replied, “I must have told him that, sir, at a given point in time because that’s what he put in the paper.” When Mr. Wolson indicated to Mr. Mulroney that he had not provided that information to Mr. Kaplan on October 12, 2003, Mr. Mulroney testified that he had “no recollection of that.” Mr. Mulroney read the excerpt from Mr. Kaplan’s interview regarding the amount of money and the transcript and stated, “Both of those statements are false. That is all I was saying.”³³⁷

Interview of Mr. Mulroney, October 24, 2003

Mr. Kaplan spoke with Mr. Mulroney on October 24, 2003.³³⁸ As that interview was winding down, Mr. Kaplan asked him whether he was available again the following weekend. Mr. Mulroney replied:

I can plan on talking to you on the weekend. Let me give you a hypothetical image that you can reflect on. Something you told me about, forget about illegality and impropriety and focus on the fact that there is a suggestion that there is something sinister about two people meeting in a hotel room. Well think about this, one of the people in the hotel room was there to attend a banquet and there is a meeting that is taking place and discussions about a commercial arrangement that is taking place. But what about if there was 3 other people in the hotel room, how would that change the image. That kind of changes it. I am telling you that the facts you gave me, they never happened.³³⁹

Mr. Kaplan speculated that Mr. Mulroney was referring to the meeting at the Pierre Hotel.

In his testimony, Mr. Kaplan said he did not think that Mr. Mulroney denied that he received money from Mr. Schreiber. He testified that Mr. Mulroney “quibbled about the amount and here about the context, but I don’t believe he ever outright rejected that claim.”³⁴⁰ The notes indicate that Mr. Mulroney then informed Mr. Kaplan that matters had been investigated by the RCMP and that he had been given a “clean bill of health.”³⁴¹

Mr. Mulroney is also noted to have stated:

If you want my cooperation and friendship, than [sic] you cannot be a friend and an opponent at the same time. That is my position. Obviously, I don't want to hurt Karl Heinz [sic] Schreiber ... I will be your friend or your enemy but not both.³⁴²

Mr. Mulroney's Perspective

With reference to the notes of the interview, Mr. Wolson asked Mr. Mulroney whether he agreed with Mr. Kaplan's indication that he was trying to convince him not to write about the money he received from Mr. Schreiber. Mr. Mulroney initially answered the question by indicating that Mr. Kaplan did not ask him whether he had a commercial relationship with Mr. Schreiber. He added that, when Mr. Kaplan asked him about the relationship in November 2003, he provided an honest answer: "The answer was yes. And I described the relationship to him."³⁴³ When pressed by Mr. Wolson, Mr. Mulroney testified, "Well, obviously I would have been happier, for reasons I have already indicated, had that not come out. But inasmuch as I had confirmed it to him, I knew of course it was going to come out."³⁴⁴

Interviews of Mr. Mulroney: October 25, 2003, and October 30, 2003

Mr. Kaplan conducted two further interviews of Mr. Mulroney, on October 25 and 30, 2003, before his article was published in the *Globe and Mail*.³⁴⁵ Mr. Kaplan confirmed that he has no further recorded interviews beyond these two discussions.³⁴⁶

Mr. Kaplan's Articles in the *Globe and Mail*, November 2003

Mr. Kaplan wrote a series of three articles that were published in the *Globe and Mail* in 2003; the last was included in the November 10, 2003, issue and was entitled "Schreiber hired Mulroney."³⁴⁷ In this last article, Mr. Kaplan wrote about the cash payments that Mr. Mulroney received from Mr. Schreiber. To the best of Mr. Kaplan's knowledge, the allegations involving the cash transactions were published for the first time in this article.

In his article, Mr. Kaplan reported that Mr. Mulroney entered into a commercial relationship with Mr. Schreiber after leaving office. Mr. Kaplan credited *National Post* reporter Philip Mathias with finding the story and "nailing it down in late 2000 and early 2001."³⁴⁸ He wrote that the *National Post* interviewed Mr. Schreiber for the story and "quoted him as saying: [T]he business relationship between [him and Mr. Mulroney] was 'normal,' and it was not up to him to 'report on Brian Mulroney to the Canadian public.'"

Mr. Kaplan also reported that Mr. Mulroney "apparently declined" to comment for the Mathias story, as did his lawyers. Mr. Kaplan noted that Mr. Mathias was able to speak to a "Mulroney confidant," who advised him that "'the former prime minister earned the fee in full' by performing services for Schreiber after the fee was paid."

When the confidant was asked why Mr. Mulroney had not made the matter public sooner, the response was that Mr. Mulroney “was fearful of creating a false impression in the middle of what he described as ‘a witch hunt over the so-called Airbus affair.’”

Mr. Kaplan wrote that Mr. Mathias had submitted his story for publication in the *National Post* in January 2001 and, when it did not appear after some time, he began to ask questions. Mr. Kaplan also wrote that Mr. Mathias met with senior editorial staff in the spring of 2001 and was told there was no story. That night, Mr. Mathias received a phone call from editor-in-chief Ken Whyte, who suggested that Mr. Mathias contact Mr. Kaplan.

During his testimony, Mr. Kaplan confirmed that he spoke with Mr. Mathias on March 15, 2001.³⁴⁹ He also confirmed that Mr. Mathias told him Mr. Mulroney had received money from Mr. Schreiber; and he said they discussed Mr. Mulroney’s answers at the examination before plea about his relationship with Mr. Schreiber as well as the story Mr. Mathias had written which the *National Post* declined to publish.

In his article, Mr. Kaplan noted that he commented to Mr. Mathias that the strangest part of the story was that Mr. Schreiber paid Mr. Mulroney in cash; he said he wished to know more, as it seemed improbable. He suggested to Mr. Mathias that Mr. Mulroney should be asked for an explanation.³⁵⁰

Mr. Kaplan wrote in his article that, while suppressing the story had averted a public relations catastrophe for Mr. Mulroney, the reprieve was temporary because, now that he had learned of the payments, he wanted an explanation.³⁵¹ Mr. Kaplan reported that he put his questions to Mr. Mulroney, and “eventually [he] explained that Schreiber had paid him the money – though he disputes the amount – for his assistance in promoting a fresh-cooked pasta business Schreiber had started in Canada as well as his international interests.”³⁵²

With reference to this excerpt, Mr. Mulroney confirmed in testimony that he had told Mr. Kaplan he was paid by Mr. Schreiber. Mr. Mulroney later said, however, that he had told Mr. Kaplan the money was for “Thyssen,” and not pasta.³⁵³

The article also discussed the commercial relationship between Mr. Mulroney and Mr. Schreiber, based on various facts obtained from the interviews Mr. Kaplan had conducted. It included the statement from Mr. Mulroney that, if a client paid for his services with cash, it “would be reflected in the books of the company, all income would be declared and all taxes paid.”³⁵⁴

Examination Before Plea

In his article, Mr. Kaplan discussed the examination before plea³⁵⁵ and questioned why, when Mr. Mulroney was examined by the lawyer representing the Government of Canada, he was never asked any questions about his business dealings with Mr. Schreiber. He noted that, “not once in the hundreds of questions put to the former prime minister, was he ever asked point-blank whether he had taken money from Schreiber.”³⁵⁶

Mr. Kaplan noted, however, that Mr. Mulroney's relationship with Mr. Schreiber after he left office was not completely avoided in the examination. He pointed to specific portions of the examination, including a question where Mr. Mulroney was asked whether he maintained contact with Mr. Schreiber after being prime minister. Mr. Kaplan also highlighted several other passages of the transcript in which Mr. Sheppard asked Mr. Mulroney whether Mr. Schreiber visited him at his home or his office when he passed through Montreal; Mr. Mulroney testified that he "had never had any dealings with him [Mr. Schreiber]";³⁵⁷ and Mr. Sheppard sought clarification of Mr. Mulroney's testimony regarding coffee with Mr. Schreiber.³⁵⁸

Mr. Kaplan suggested in the article that the questions asked of Mr. Mulroney were "badly framed – and very carefully answered."³⁵⁹ He wrote that Mr. Mulroney had "ample opportunity to come clean about his professional relationship with [Mr.] Schreiber." He noted that, "[i]nstead, he helped to create the impression that he carefully considered Schreiber's business proposal when he was prime minister – but rejected it after determining it wasn't in the best interest of the Canadian people – and subsequently maintained, at best, a cordial and infrequent acquaintance with Schreiber after he left office."³⁶⁰

As previously reviewed in the context of Mr. Kaplan's interviews, Mr. Mulroney told Mr. Kaplan that, if the government side had asked him about his commercial relationship with Mr. Schreiber, he "would have answered the question."³⁶¹ However, the article went on to quote Mr. Lavoie as stating that, had the examiners asked, "[t]hey would have been told that the relationship was privileged."³⁶²

I pause to observe that Mr. Lavoie's reference to privilege is interesting in light of the position always maintained by Mr. Mulroney that, in his dealings with Mr. Schreiber, he was acting as a consultant, not as a lawyer.

Mr. Kaplan wrote in his article that "[t]he lawyers examining him [Mr. Mulroney] may have blown it badly, but didn't he have an obligation, a special obligation as a former prime minister, to make it perfectly clear that he and Schreiber had a commercial relationship?"³⁶³ Mr. Kaplan continued: "You have to admire [Mr.] Mulroney's bravado: suing the government for \$50-million to refute a claim that he had been bribed by Schreiber when the two had done business together. Balls of steel. Had the government lawyers learned about it, they might never have settled. It was a very close call."³⁶⁴

Mr. Kaplan continued: "What is also very surprising about it all – and arguably telling of their legitimacy and Mulroney's innocence – is that Mulroney did not just deny the payments."³⁶⁵ Mr. Kaplan added that denying the payments would have been easy, given the absence of witnesses to the exchanges.³⁶⁶

Interactions with Mr. Mulroney Before Publication of the Article

In his testimony, Mr. Kaplan stated that he received a number of phone calls in addition to the interviews he had with Mr. Mulroney leading up to the publication of his articles in the *Globe and Mail*. In *A Secret Trial* he described working with Edward Greenspon, the editor-in-chief of the *Globe and Mail*, as they prepared the article, and the escalating number of calls from Mr. Mulroney: “Telephone calls from Mulroney to me, and to Greenspon, escalated. Greenspon advised Mulroney that I would be telling the whole story.”³⁶⁷ In the final chapter of *A Secret Trial*, Mr. Kaplan described this period of interaction with Mr. Mulroney:

Mulroney’s unrelenting campaign to persuade me not to publish the story about the money for one reason only – to protect his reputation – was brutal, heavy-handed and extremely wearing.³⁶⁸

Mr. Kaplan confirmed that this excerpt reflected his impression of his interactions with Mr. Mulroney at the time.³⁶⁹ Further, he testified that “Mr. Mulroney did not want the story about the cash payments to become public and encouraged me on a number of occasions not to report on that.”³⁷⁰ He stated that there were “many telephone calls and discussions with Mr. Mulroney leading up to the publication of the story in November.” Mr. Kaplan said that, among other things, in these conversations Mr. Mulroney was trying to persuade him not to write the story.

Mr. Mulroney’s Perspective

According to Mr. Mulroney, he and Mr. Kaplan had “infrequent conversations,” in which he “sought to persuade him [Mr. Kaplan] not to convey that information.”³⁷¹ He added that, “when he asked me the direct question for publication in the *Globe*, I told him the truth. I didn’t deny anything, I told him the truth.”

Mr. Mulroney stated that he had “no recollection of calling him [Mr. Kaplan] for that specific objective” – namely, persuading him not to write about the commercial relationship with Mr. Schreiber.³⁷² He testified that he and Mr. Kaplan called each other, and “[v]arious subjects in which he [Mr. Kaplan] was interested would come up, in various conversations – about his book and the areas of interest that he wanted to talk about, and obviously this was one of them.”

When pressed on the issue of whether he phoned Mr. Kaplan several times in an attempt to convince him not to publish the story, Mr. Mulroney eventually stated:

I think, sir, that the manner in which that is put is inaccurate. If you asked me: Did I have conversations with him? Yes, sir; I think, invariably, in response to calls or e-mails that he sent to me. I would then call him back in the evening, one time – when I had some time, I would return his telephone calls, and we would have a pretty open conversation, yes.

I don’t deny that at all.³⁷³

However, when Mr. Mulroney was asked whether Mr. Kaplan's testimony that he (Mr. Mulroney) encouraged Mr. Kaplan not to report on the cash payments was accurate, he answered, "I don't think that's an unfair statement ... in the context of precisely what I have told you."³⁷⁴

At Mr. Wolson's suggestion, Mr. Mulroney agreed that the "climate" in 2003 was "a lot better than it was in and around the time of the LOR [letter of request]."³⁷⁵ He also agreed with the notion that, if the story that he received cash payments from Mr. Schreiber had become public in 2003, it would have added to his anxiety.

Mr. Kaplan wrote in *A Secret Trial*, with respect to the lead up to the publication of his article of November 10, 2003, that Mr. Mulroney attempted to meet with him on November 3, 2003, and suggested that Mr. Kaplan bring along a draft of his article.³⁷⁶ With reference to this assertion, Mr. Mulroney testified that he did not recall asking Mr. Kaplan to bring a draft and that such a request would have been unusual for him to make.³⁷⁷

The Final Conversation

On November 9, 2003, Mr. Mulroney and Mr. Kaplan spoke for the last time.³⁷⁸ Mr. Kaplan wrote in his book that the purpose of the conversation was for Mr. Mulroney to address Mr. Kaplan's concerns with his misleading testimony at the examination before plea. Mr. Kaplan wrote:

At some point in our conversation, not long after we began, Mulroney told me it was not an interview. This was the first time, in all the years I've known him and in countless conversations, many lasting hours, that he had ever said that. I should have said no, that it was an interview and that if it continued I could and would feel free to quote what he said. We reviewed the transcript. I directed him to the problems. It was an emotional conversation and, at the time, the stakes truly seemed enormous. We both believed, quite wrongly as it turned out, that Canadians would notice – and care. He talked about honour. I pointed out that he was not the only person with honour. I had sat in his house and he had told me that he barely knew Schreiber – and that was not true. He responded: "I regret any inconvenience that I may have caused."³⁷⁹

In his testimony, Mr. Mulroney said that he had no recollection of saying, "I regret any inconvenience that I may have caused."³⁸⁰ When initially asked whether he made this statement, he remarked that Mr. Kaplan had carefully examined the transcript of the examination before plea and, in his November 10, 2003, article, had stated that Mr. Mulroney was not asked about the commercial arrangement and had not committed perjury. Mr. Mulroney continued:

And if he is talking about emotional conversations that took place before, you better believe it. I was telling him that if somebody has convinced you that I misled anyone in that court, they have sold you a bill of goods ... I was able to prove to his satisfaction that nothing was misleading ... That is why he concluded in his article that no perjury of any kind was involved. That's what I recollect from this.³⁸¹

Mr. Wolson subsequently pressed Mr. Mulroney regarding whether he had told Mr. Kaplan that he regretted any inconvenience he may have caused and whether he was challenging Mr. Kaplan's notes of the conversation. Mr. Mulroney responded that he had no recollection.³⁸²

Mr. Kaplan confirmed the following passage from *A Secret Trial* in which he described his reaction to Mr. Mulroney's remark, "I regret any inconvenience that I may have caused".³⁸³

I could not believe my ears. I had trusted Brian Mulroney. He had looked me in the eye. He had told me the same story he told the Canadian people – the same misleading story that he had but a "peripheral" relationship with Karlheinz Schreiber. He regretted the inconvenience? ... Raising my voice for the first time ever in a discussion with him, I told him it was not good enough. He then said "I'm sorry." Although he called my house later that night, I did not answer the telephone. I have not spoken to Brian Mulroney since.³⁸⁴

In his examination before me, Mr. Mulroney was asked if he said, "I'm sorry," when Mr. Kaplan told him "it was not good enough."³⁸⁵ Mr. Mulroney answered, "[O]f course not."

When asked whether he called Mr. Kaplan's house later on the night of November 9, as Mr. Kaplan testified, Mr. Mulroney stated, "I have no recollection of that, but I doubt it."³⁸⁶ He added, "I'm not saying it didn't happen. We spoke frequently."

Mr. Kaplan's Interviews of Mr. Schreiber

Mr. Kaplan spoke with Mr. Schreiber on several occasions. One discussion in particular – on April 29, 2002, is relevant for the purposes of this chapter. Mr. Kaplan confirmed that Mr. Schreiber stated that he (Mr. Schreiber) asked Mr. Mulroney about Mr. Kaplan and whether he should co-operate with him. Mr. Mulroney "advised him in the strongest possible terms, he said, not to speak to [Mr. Kaplan] because [he] was unreliable."³⁸⁷

In his testimony, Mr. Kaplan stated that Mr. Schreiber's remark referred to the period when he was conducting research for his first book, *Presumed Guilty*, and in which he made many efforts to contact Mr. Schreiber for an interview. Mr. Kaplan mentioned that he offered to travel to Switzerland to meet with Mr. Schreiber, but that he was unsuccessful in arranging such a meeting.³⁸⁸

Mr. MacAdam's Testimony

According to Pat MacAdam, he has known Mr. Mulroney since 1955 and he thinks they are close friends. They both attended the same university. Mr. MacAdam worked as caucus liaison officer while Mr. Mulroney was the leader of the opposition and, from 1984 to 1987, while he was prime minister.³⁸⁹ I have already commented on my negative view of the quality of Mr. MacAdam's evidence and his value as a witness before me (see Chapter 6).

Mr. Kaplan's notes indicate that he interviewed Mr. MacAdam on July 18, 2004.³⁹⁰ He received a letter from Mr. MacAdam the following day, on July 19.³⁹¹ Mr. MacAdam's evidence is important for this chapter on just one point: Mr. Kaplan's testimony that, from Mr. MacAdam's letter dated July 19, 2004, he learned for the first time about Mr. Mulroney's explanation that he had travelled to China on behalf of Mr. Schreiber.³⁹² The trip to China and the discussions Mr. Mulroney allegedly had with Chinese leaders were significant inasmuch as he (Mr. Mulroney) said later that he discussed the concept of the sale of military vehicles to the United Nations, where China was a member of the P5, at a moment when, according to Fred Bild, the former Canadian ambassador, China was still *persona non grata* on the level of anything to do with military or military equipment. I accept Mr. Bild's evidence that a discussion of this nature involving a former prime minister of Canada would have created a diplomatic reaction. No such reaction occurred. Mr. Kaplan testified that, because there are no references to this trip in his notes, Mr. Mulroney never mentioned it during their many interviews – which often lasted for several hours and occurred over a six-year period from 1997 to 2003.³⁹³ Mr. Kaplan further stated that he had not heard of Mr. Mulroney's trips to France and Russia regarding this project until Mr. Mulroney testified before the House of Commons Standing Committee on Access to Information, Privacy and Ethics in December 2007.³⁹⁴

Analysis of Evidence

In Question 12 of the Terms of Reference, “Was there appropriate disclosure and reporting of the dealings and payments?” I am directed to investigate and report on whether Mr. Mulroney appropriately disclosed and reported on both his dealings with Mr. Schreiber and the cash Mr. Schreiber paid to him as a result of those dealings.

Before the Factual Inquiry began, after hearing submissions on the issue, I made a ruling that specified the standard of appropriateness by which I would be assessing Mr. Mulroney's conduct. Mr. Mulroney then brought a motion before me to clarify that ruling by specifying the period of time to which the standard would be applied.

Mr. Mulroney's counsel, Mr. Pratte, took the position that the period of time in question ought to be confined to the years during which Mr. Mulroney served as prime minister of Canada and the period defined by the 1985 Conflict of Interest and Post-Employment Code for Public Office Holders (the 1985 Ethics Code).

I disagreed with Mr. Pratte's position on that issue. As I said in my ruling:

I have no interest in delving into the private life or private business affairs of Mr. Mulroney. My interest is restricted to those issues set forth in the Terms of Reference as established by the Governor in Council. As regards the timeframe, if there is evidence of conduct on the part of Mr. Mulroney that occurred after he left the high office of prime minister but that relates to the matters before me under the

Terms of Reference, I will apply the standard set in the Standards Ruling for assessing that conduct.³⁹⁵

In this chapter of my Report, I have attempted to make reference to what I perceive to be the relevant evidence that touches on the issue of disclosure and reporting. I will now proceed to analyze that evidence.

I propose to deal with the issue of disclosure and reporting by examining the evidence as it relates to various occasions when Mr. Mulroney had the opportunity to disclose and report on his business dealings with Mr. Schreiber, the cash paid to him by Mr. Schreiber, or both the dealings and the cash.

Mr. Mulroney had numerous opportunities when he could have disclosed and reported on his dealings with Mr. Schreiber. In each of those instances, Mr. Mulroney chose not to make disclosure. I list them here in summary form, though I will go on to deal with each one in turn:

- 1 When Mr. Mulroney and Mr. Schreiber entered into their agreement on August 27, 1993, and on each of the two subsequent occasions when Mr. Mulroney received cash from Mr. Schreiber.
- 2 On seven occasions, in each of the years 1993 to 1999, inclusive, when Mr. Mulroney could have declared a reserve under the *Income Tax Act* for monies paid to him by way of retainer.
- 3 Subsequent to Mr. Mulroney's commencing a lawsuit against the Government of Canada and others, when Mr. Mulroney was examined under oath in the course of that lawsuit by one of the lawyers for certain of the defendants, including the Government of Canada.
- 4 When Luc Lavoie, Mr. Mulroney's spokesperson, advised him to make disclosure of his dealings with Mr. Schreiber.
- 5 When Mr. Mulroney provided information to William Kaplan, when he was in the process of writing *Presumed Guilty*, and in subsequent interviews by Mr. Kaplan.

WHEN THE AGREEMENT WAS MADE AND WHEN THE TWO SUBSEQUENT PAYMENTS WERE MADE

In my view, the first occasion on which Mr. Mulroney had the opportunity to disclose and report on his dealings with and the payments received from Mr. Schreiber arose immediately after August 27, 1993, when Mr. Schreiber and Mr. Mulroney entered into their agreement in the hotel room at Mirabel Airport. However, Mr. Mulroney did nothing by way of disclosure and reporting. There was no documentation to memorialize the agreement they had made. Mr. Mulroney rendered no receipt for the money paid to him pursuant to his agreement with Mr. Schreiber. Moreover, Mr. Mulroney, who was a sophisticated businessman, failed then, and on the two subsequent occasions when he received cash from Mr. Schreiber, to deposit the money into an account at a bank

or other financial institution. Such deposits would have been in keeping with basic business acumen.

In Chapter 6 of this Report, I expressed the view that the failure to memorialize the agreement and to acknowledge in writing the payment of cash was in keeping with the desire on the part of both Mr. Mulroney and Mr. Schreiber to conceal the fact that they were doing business with each other.

NON-DECLARATION OF RESERVES UNDER THE *INCOME TAX ACT*

Mr. Mulroney testified that the agreement he made with Mr. Schreiber on August 27, 1993, was to provide services in the future, including conducting what he described as a watching brief. While giving evidence before me, Mr. Mulroney said that the cash he received on August 27, 1993, and on two subsequent occasions, December 18, 1993, and December 8, 1994, was paid to him as a retainer for these services.

In my view, each tax year from 1993 to 1999, inclusive, presented Mr. Mulroney with an opportunity to disclose and report on his dealings with, and payments received from, Mr. Schreiber. The opportunity to which I refer is the declaring of a reserve pursuant to the *Income Tax Act* because that option is available to taxpayers when they receive money by way of a retainer. Simply put, when a person is in receipt of payment of monies by way of a retainer and declares a reserve under the *Income Tax Act*, no income tax is payable until services are provided. The evidence is clear that, on no occasion, did Mr. Mulroney declare a reserve as he was entitled to do under the *Income Tax Act*.

Let me emphasize that I am not suggesting that Mr. Mulroney breached or violated any provision of the *Income Tax Act* by failing to declare a reserve. All I am saying is that Mr. Mulroney had an opportunity on seven separate occasions to declare and report on his dealings with, and payments received from, Mr. Schreiber, and that he chose not to take advantage of the opportunities presented. Mr. Mulroney's decision not to do so supports my finding that he wished to conceal the payments and his business and financial dealings with Mr. Schreiber.

THE EXAMINATION BEFORE PLEA

In 1995, following the publication of the letter of request sent by the Department of Justice on behalf of the Government of Canada to the Competent Legal Authority of Switzerland, Mr. Mulroney sued the Government of Canada and others for \$50 million, claiming damages arising from injury to his reputation. Mr. Mulroney named several defendants in his lawsuit.

Mr. Mulroney had an opportunity to disclose and report on his dealings with Mr. Schreiber and the payments he received in April 1996, when he was examined under oath by the counsel for several of the defendants in the lawsuit, including the Government of Canada.

In an examination before plea, the lawyer for a defendant named in a lawsuit is entitled to question the plaintiff even before the defendant has filed a formal statement of defence to the plaintiff's claim. However, the questions asked on an examination before plea must be confined to the allegations set out in the statement of claim. The examination before plea cannot be turned into a fishing expedition in which a defendant's lawyer seeks to ascertain evidence not pertinent to the lawsuit.

The examination before plea of Mr. Mulroney was conducted by Claude-Armand Sheppard, counsel for the Government of Canada and others, in public at the courthouse in Montreal on April 17 and 19, 1996. The issue with which I must deal here is whether Mr. Mulroney had the opportunity during his examination to disclose and report on his dealings with Mr. Schreiber and the payments.

I pause here to note that Mr. Mulroney's spokesperson, Mr. Lavoie, told Mr. Kaplan in the course of an interview that, while he was on the way to the law courts with Mr. Mulroney for the examination before plea, Mr. Mulroney told him that Mr. Sheppard was going to have a problem. "He is going to ask me questions and he expects me to answer them," Mr. Mulroney said.

When Mr. Wolson asked Mr. Mulroney about this comment, he did not deny making it to Mr. Lavoie. He testified before me that he made the comment in jest. Bearing in mind what transpired during the course of the examination before plea, the nature of that comment by Mr. Mulroney seems to me to be more ominous than humorous.

Mr. Wolson pressed Mr. Mulroney more than once as to why, during the course of his being examined before plea, he had failed to disclose his dealings and payments involving Mr. Schreiber. On each occasion, Mr. Mulroney responded in one or more of the following ways: that he had been advised by his counsel not to answer any question that was not within the parameters of the statement of claim; that he had also been advised by his counsel not to volunteer information; and that Mr. Sheppard had failed to ask the right question.

Mr. Mulroney acknowledged that, when examined by Mr. Sheppard, he had taken an oath to tell the truth, the whole truth, and nothing but the truth. He also acknowledged that he was well represented by counsel, who could have objected and who did object to Mr. Sheppard's questions when they deemed them to be improper.

I note that the letter of request makes reference not only to Airbus but also to the Bear Head Project and payments made to Mr. Mulroney while he was the prime minister of Canada, as a result of a conspiracy to which he was allegedly a party, along with Mr. Schreiber and Frank Moores. Mr. Mulroney's statement of claim expressly pleaded the injury to his reputation arising from the fraud allegedly committed by Mr. Mulroney on the Government of Canada in relation to the Bear Head Project and to payments to Mr. Mulroney by Bear Head Industries through Mr. Schreiber.

As a result, in my view the issue of Mr. Mulroney's relationship with Mr. Schreiber fell within the ambit of the statement of claim. As far as I am concerned, that means that questions about that relationship were proper and should have been answered fully and truthfully.

Advice to a person about to be examined not to volunteer information is good legal advice. However, in my view, not volunteering information is substantially different from avoiding legitimate, proper questions to which no objection has been taken by counsel for the person being examined. I also note that, while a witness being examined before plea is entitled to answer only those questions that fall within the confines of the statement of claim, if a person does not object to a question and chooses to answer it, he or she must do so truthfully and fully. Did Mr. Mulroney avoid answering questions that were legitimate and proper, and to which his counsel had made no objections? Let us look briefly at what transpired.

On November 2, 1995, Mr. Schreiber advised Mr. Mulroney by telephone of the letter of request. Mr. Sheppard asked Mr. Mulroney about that conversation. He also asked Mr. Mulroney about conversations he may have had subsequent to November 2, 1995, dealing with commissions paid to Mr. Schreiber by Airbus. Mr. Mulroney responded that he did not know what arrangements, if any, had been made by Mr. Schreiber or anyone else *in respect of any commercial transaction* [emphasis added].

When he gave that answer, Mr. Mulroney knew about his commercial transaction with Mr. Schreiber. He also knew that, within a few miles of the court house in Montreal, he had either \$150,000 or \$200,000 sitting dormant in a safe in his residence, not to mention a further \$75,000 or \$100,000 sitting in a safety deposit box in a bank in New York.

In response to another question Mr. Sheppard asked him about discussions he might have had with Mr. Schreiber after he knew about the letter of request, Mr. Mulroney responded that his principal preoccupation was not Mr. Schreiber's business dealings. He then stated, "I had never had any dealings with him." My observation about that answer is simply to reiterate what I said in the preceding paragraph.

Mr. Mulroney's position is that the answers he gave to those questions were given in the context of Airbus. However, as I have already noted, both the letter of request and the statement of claim also referred to the Bear Head Project.

Mr. Sheppard asked Mr. Mulroney about his relationship with Mr. Schreiber while he was in office, about meetings he had with Mr. Schreiber during that time, and where those meetings took place. In response, Mr. Mulroney gave an expansive answer that included a reference to meetings in his office and others that might have taken place in other circumstances. He did not mention his meeting with Mr. Schreiber at Harrington Lake on June 23, 1993.

Before me, Mr. Wolson asked Mr. Mulroney why, in his answer to Mr. Sheppard, he had not mentioned the Harrington Lake meeting. Mr. Mulroney replied that he had not been asked to detail all the meetings he had with Mr. Schreiber.

At the examination before plea, Mr. Sheppard also asked Mr. Mulroney whether he maintained contact with Mr. Schreiber after he ceased being the prime minister. Mr. Mulroney responded as follows:

Well, from time to time, not very often. When he was going through Montreal, he would give me a call. We would have a cup of coffee. I think, once or twice. And he told me that he continued to work on his project, that he was pushing a new government.³⁰⁴

In my opinion, Mr. Mulroney's response to that question by Mr. Sheppard would lead anyone not knowing the true situation about Mr. Mulroney's dealings with Mr. Schreiber or the money he had received from Mr. Schreiber to believe that the post-prime ministerial contact consisted of a couple of brief meetings to have a cup of coffee.

When Mr. Mulroney answered Mr. Sheppard's question, he failed to disclose the true state of affairs, including his agreement with Mr. Schreiber; the two cash payments in envelopes he had received from Mr. Schreiber in hotel rooms at Mirabel and in New York, respectively; or the cash payment he received, again in an envelope, in the coffee shop at the Queen Elizabeth Hotel in Montreal.

For Mr. Mulroney to attempt to justify his failure to make disclosure in those circumstances by asserting that Mr. Sheppard did not ask the correct question is, in my view, patently absurd. Mr. Mulroney was the only person in the room where the examination before plea was taking place who knew about the dealings and the payments between him and Mr. Schreiber. Mr. Mulroney's meetings with Mr. Schreiber were not about having a cup of coffee. Rather, they had to do with a commercial transaction between the two men and the payment of cash by Mr. Schreiber to Mr. Mulroney in connection with that transaction.

I suggest that Mr. Sheppard did ask the right question when he wanted to ascertain what contact, if any, was maintained between Mr. Mulroney and Mr. Schreiber subsequent to Mr. Mulroney's departure from the office of prime minister. There was no objection to the question by counsel for Mr. Mulroney because it was not an objectionable question. Nor did the question call for the volunteering of information by Mr. Mulroney. What the question called for was a clear, complete, forthright answer.

Based on all the evidence before me, I have concluded that it was not Mr. Sheppard's question that was problematic; rather, it was Mr. Mulroney's answer to the question. Some may suggest that Mr. Mulroney's answer was not complete, while others may say it was not forthright. It is sufficient for my purpose to say that Mr. Mulroney's answer to Mr. Sheppard's question failed to disclose appropriately the facts of which Mr. Mulroney was well aware, when such disclosure was clearly called for.

THE ADVICE FROM MR. LAVOIE

Another opportunity arose for Mr. Mulroney to disclose and report on his dealings with Mr. Schreiber and the payments he received from him when his trusted spokesperson, Mr. Lavoie, advised him to inform Canadians about the transactions.

The evidence before me discloses that Mr. Lavoie knew nothing about Mr. Schreiber's cash payments to Mr. Mulroney until 2000, some six years after the fact, when Mr. Mulroney's lawyer, Gérald Tremblay, told him about them. Mr. Lavoie immediately gave Mr. Mulroney advice that I consider to be very sage – namely, that Mr. Mulroney should himself disclose the fact of the dealings and the payments. Mr. Lavoie went on to discuss this matter with Mr. Mulroney on four or five separate occasions. Mr. Mulroney acknowledged in his testimony before me the wisdom of this advice.

Mr. Lavoie testified that Mr. Mulroney panicked at the thought of the information about his dealings and the payments becoming public. Mr. Mulroney testified that he did not panic, but that his dealings with Mr. Schreiber and the payments he had received from him were a private matter in the private sector after he had left office. He said there was nothing illegal about what he had done and that he had never knowingly done anything wrong in his life.

I will have more to say about this response in Chapter 9, which deals with the appropriateness, or otherwise, of Mr. Mulroney's conduct. It is sufficient to say here that I would have thought that, after dealing with Mr. Schreiber on the Bear Head Project over a period of several years while he was prime minister, Mr. Mulroney would have at least questioned the propriety of his commencing to deal in such a secretive manner with Mr. Schreiber within weeks of his departing that office.

In relation to Mr. Lavoie's view of Mr. Mulroney's reaction to his advice, it would not be unreasonable to conclude that, in the circumstances, Mr. Mulroney would indeed panic at the prospect of information becoming public concerning his post-prime ministerial dealings with Mr. Schreiber and the payment of monies, particularly given his lawsuit against the Government of Canada. Rather than personally disclosing and reporting on the dealings and payments, however, Mr. Mulroney had Mr. Lavoie do so on his behalf. Rather than having Mr. Lavoie do so immediately, Mr. Mulroney had him wait another two years, until 2002, to disclose the payments.

As for the amount of the payments, in 2002 Mr. Lavoie told Mr. Kaplan that the monies paid amounted to substantially less than \$300,000. According to Mr. Lavoie, Mr. Mulroney had told him so.

Mr. Lavoie provided several different explanations for the payments to Mr. Kaplan: first, for assisting Mr. Schreiber with a pasta machine business; second, for lobbying for Bear Head; third, for work done on behalf of a client, the matter being governed by solicitor-client privilege; and fourth, because Mr. Mulroney needed the money to ease his financial situation immediately after leaving office.

On November 5, 2007, Mr. Lavoie disclosed in an email sent to journalist Bruce Campion-Smith that Mr. Mulroney's mandate involved assistance in building a factory for Thyssen and launching a chain of pasta restaurants. Mr. Mulroney said he was not consulted before Mr. Lavoie provided that information to the journalist. Also, Mr. Mulroney testified that what Mr. Lavoie said about the purpose for the payments was unintentionally inaccurate.

Mr. Lavoie made statements in an interview given to Jack Aubry of Canwest News Services on November 21, 2007, that Mr. Mulroney made a colossal mistake in taking \$300,000 in cash. In his testimony before me, Mr. Lavoie confirmed those statements and said it was possible that he mentioned the figure of \$300,000. Once again, in his testimony before me, Mr. Mulroney denied the accuracy of what Mr. Lavoie had said. In my view, it is not surprising that Mr. Lavoie was making inaccurate statements to the media: Mr. Mulroney was not candid as he ought to have been with Mr. Lavoie and did not provide him with an accurate account of his dealings with Mr. Schreiber.

WHEN MR. KAPLAN WAS WRITING *PRESUMED GUILTY* AND THEREAFTER

Mr. Mulroney had another opportunity to disclose and report on his dealings with Mr. Schreiber and the payments on various occasions when he was interviewed by William Kaplan.

The first of two books Mr. Kaplan wrote dealing with Mr. Mulroney, *Presumed Guilty*, was published in 1998. Mr. Kaplan was offended at the treatment afforded Mr. Mulroney by the Government of Canada regarding Airbus. He wrote his book to set the record straight and to defend Mr. Mulroney's reputation. In preparing to write this first book, Mr. Kaplan interviewed Mr. Mulroney on several occasions and often for many hours on end. In all these discussions, Mr. Mulroney said nothing to Mr. Kaplan about his commercial relationship with Mr. Schreiber. During an interview on December 2, 1997, Mr. Mulroney told Mr. Kaplan that he knew Mr. Schreiber in a "peripheral way."

Mr. Kaplan's second book, *A Secret Trial*, was published in 2004. He wrote that book after he learned about the cash payments Mr. Schreiber made to Mr. Mulroney. Mr. Kaplan testified that, as a historian of the Airbus affair, he felt he had a professional and moral obligation to set the record straight.

In January 2002 Mr. Kaplan heard from Mr. Lavoie that Mr. Mulroney had received a substantial amount of money from Mr. Schreiber. Some time shortly before January 2, Mr. Lavoie told him that Mr. Mulroney had been paid \$300,000, and then, on January 4, he said that the amount paid was substantially less than \$300,000. Understandably, Mr. Kaplan was dismayed to get this information, and he felt he had been duped by Mr. Mulroney about his relationship with Mr. Schreiber. Also, according to Mr. Kaplan, while he was writing *Presumed Guilty*, other people

associated with Mr. Mulroney had contributed to his belief that Mr. Mulroney and Mr. Schreiber really didn't know each other, when in fact the two men had been involved in business together and Mr. Schreiber had made three large cash payments to Mr. Mulroney.

One week after hearing from Mr. Lavoie, Mr. Kaplan received a telephone call from Mr. Mulroney. During the course of that conversation, Mr. Mulroney told Mr. Kaplan something he also said to me several times while he was testifying – that to the best of his recollection, he had never in his life done anything wrong, unethical, or illegal. Mr. Mulroney also reiterated to Mr. Kaplan that his knowledge of Mr. Schreiber was peripheral. Mr. Kaplan told Mr. Mulroney that he felt he had been misled by him. Mr. Mulroney responded that these were matters of context and nuance.

More than once while testifying before me, Mr. Mulroney sought refuge under the umbrellas of context and nuance when it came to things he had told others. What I think he was trying to convey was that words can mean different things, depending on the context and nuance in which they are used.

While I recognize that the word “peripheral” is a term of relativity, when Mr. Mulroney told Mr. Kaplan that his knowledge of Mr. Schreiber was peripheral, it was more than reasonable for Mr. Kaplan to infer that Mr. Schreiber and Mr. Mulroney hardly knew each other. The manner in which Mr. Mulroney described his relationship with Mr. Schreiber did not, in my view, accurately reflect a business relationship that had endured over a period of several years, and involving the payment to him of \$225,000 or more in cash by Mr. Schreiber. From my perspective, any objective observer would have drawn the same inference.

In an interview on December 4, 2002, Mr. Mulroney told Mr. Kaplan, among other things, that any cash payment by a client would have been reflected in the books of his company, Cansult. The evidence discloses that Mr. Mulroney did not record the cash payments he received from Mr. Schreiber in Cansult's books. In fact, Mr. Mulroney did not use his company as a vehicle to do business with Mr. Schreiber. In his own defence, Mr. Mulroney testified that, when Mr. Kaplan interviewed him, he believed he had recorded the payments in the company books.

I have considerable difficulty accepting that statement by Mr. Mulroney. Just two years earlier, Mr. Mulroney had made a voluntary tax disclosure to Canada Revenue Agency through his lawyer, Wilfrid Lefebvre. Surely the issue of whether the cash payments had been recorded by Mr. Mulroney on the books of his company would have arisen in the course of instructing Mr. Lefebvre before finalizing the voluntary tax disclosure. Based on the evidence regarding his handling of the cash, it is difficult to imagine how this statement could possibly be true.

Some time before October 5, 2003, Mr. Kaplan disclosed to Mr. Mulroney that he planned to write an article on Mr. Mulroney's transactions with Mr. Schreiber. Mr. Mulroney thereupon attempted to convince Mr. Kaplan that the information he had concerning these payments was false. Mr. Kaplan had received the story from Philip Mathias, the first journalist to write an article about the payments. Mr. Mathias's employer, the *National Post*, apparently refused to publish his article.

According to Mr. Kaplan, on October 24, 2003, leading up to the publication of the article he proposed to write about Mr. Mulroney and Mr. Schreiber, Mr. Mulroney said to him:

If you want my cooperation and friendship, then you cannot be a friend and an opponent at the same time. This is my position. Obviously, I don't want to hurt Karlheinz Schreiber. I will be your friend or your enemy but not both.

I do not propose to go into the evidence in detail any further, as I have done that in my review of the evidence earlier in this chapter. It is sufficient to say that the evidence I heard convinces me that Mr. Mulroney went to great lengths to try to persuade Mr. Kaplan not to write the article about his dealings with Mr. Schreiber or the payments he had received from Mr. Schreiber.

In his book *A Secret Trial*, Mr. Kaplan referred to Mr. Mulroney's "unrelenting campaign," which he described as "brutal, heavy-handed and extremely wearing," to persuade him not to publish the story. Mr. Kaplan believes, quite rightly in my opinion, that Mr. Mulroney had a singular purpose in mind in attempting to block the publishing of the article – namely, to protect his reputation. When asked about this by Mr. Wolson, Mr. Mulroney did not deny what Mr. Kaplan had said. The evidence I accept persuades me that Mr. Mulroney did not want the article about his dealings with Mr. Schreiber or the payments he received to be published.

I also accept as true Mr. Kaplan's evidence that, on a number of occasions, Mr. Mulroney encouraged him not to report on the subject of the dealings and payments. When asked by Mr. Wolson if Mr. Kaplan's testimony was accurate about his encouraging him (Mr. Kaplan) not to report on the cash payments, Mr. Mulroney said it was not an "unfair statement in the context of precisely what I have told you." I deduce from this description that this is precisely what Mr. Mulroney was attempting to do.

VOLUNTARY TAX DISCLOSURE

Mr. Mulroney disclosed and reported on his dealings with Mr. Schreiber and the payments when he made his voluntary tax disclosure. All negotiations were handled by Wilfrid Lefebvre, a partner of Mr. Mulroney at Ogilvy Renault who practised in the area of tax law. The negotiations commenced in late 1999 and were finessed in 2000.

Mr. Mulroney testified that he terminated the retainer in 1999. However, Mr. Lefebvre wrote to the CCRA on January 27, 2000, that it had lasted for a period of three years, commencing in 1993. Had the retainer actually been terminated in 1999 and had Mr. Mulroney not taken out as fees any money from the retainer paid, he would have been obliged to claim as income the whole amount he received from Mr. Schreiber in one year, as opposed to spreading it over a three-year period. Mr. Wolson asked Mr. Mulroney why, if the retainer ended in 1999, he did not declare the monies received in that tax year and pay income tax on it. Mr. Mulroney testified that he left everything to his lawyer, Mr. Lefebvre. He said he did not know why Mr. Lefebvre chose to pursue the option of a voluntary tax disclosure. In my view, Mr. Mulroney cannot avoid responsibility for what was disclosed or not disclosed in the voluntary tax disclosure. Ultimately, the responsibility for that disclosure was his alone.

It is clear that Mr. Lefebvre was Mr. Mulroney's agent in proceeding by way of the voluntary tax disclosure. There were certain real advantages to the voluntary disclosure program. First, the income received was taxable as if it were earned over three years rather than in one year. Second, and astonishingly, in accordance with the manner in which the program was administered in Quebec at the time, Mr. Mulroney was taxed on only half the income he claimed, not the full amount. Had Mr. Mulroney disclosed the income to the CCRA in the years it was actually earned, rather than years later by way of the voluntary tax disclosure, he would have paid tax on the whole of the income, not just half. Third, and perhaps most important, as a result of an agreement between Mr. Mulroney's lawyer and CCRA, Mr. Mulroney was not required to disclose the name of the person – Mr. Schreiber – who was the source of the income. It is important to note that, even though Mr. Mulroney ultimately disclosed the income by way of the voluntary tax disclosure, his action did absolutely nothing in terms of disclosing and reporting on his dealings with Mr. Schreiber.

I conclude there were valid reasons for Mr. Mulroney to choose to take advantage of the voluntary disclosure program. That said, it did nothing in terms of disclosing and reporting on his dealings with Mr. Schreiber.

This completes my examination and analysis of the evidence relating to Question 12, "Was there appropriate disclosure and reporting of the dealings and payments?" In Chapter 9, I answer the three questions in the Terms of Reference that deal with the appropriateness of Mr. Mulroney's conduct. As will be seen there, my answer to Question 12 is "No."

NOTES

- 1 See Chapter 6; however, see also the mandate document drafted by Mr. Doucet (Exhibit P-29, tab 46).
- 2 Exhibit P-48.
- 3 Exhibit P-7(2), tab 116.
- 4 Ibid.
- 5 According to the CBC *the fifth estate* chronology, "Money, Truth and Spin," Luc Lavoie met with Mr. Mulroney on November 14, 1995, and was briefed about the LOR. Mr. Lavoie later "book[ed] into the Queen Elizabeth Hotel," which became his "communications command center to manage the growing crisis for Mulroney." CBC *the fifth estate*, "Money, Truth and Spin," website: http://www.cbc.ca/fifth/moneytruthandspin/timeline_1995_november.html
- 6 CBC *the fifth estate*, "Money, Truth and Spin."
- 7 Exhibit P-48, April 17, 1996, pp. 69, 80.
- 8 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3639–40.
- 9 Ibid., pp. 3638–44.
- 10 Exhibit P-46, tabs 4, 5, 6, 7. Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3645–62.
- 11 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3650–51.
- 12 Ibid., pp. 3651–53.
- 13 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3658–59.
- 14 CBC *the fifth estate*, "Money, Truth and Spin."
- 15 Ibid.
- 16 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3660, [ENGLISH TRANSLATION], p. 3659.
- 17 Exhibits P-26, P-26a.
- 18 RSQ, c. c-25 art. 397. Exhibit P-48 (April 17, 1996); Exhibit P-48 (April 19, 1996). Final written submissions of Mr. Brian Mulroney, pp. 70–71.
- 19 *Weinstein v. Swift Canadian Co.*, [1976] CA 253; Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3801, 3873.
- 20 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3674.
- 21 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3793.
- 22 Ibid., pp. 3793–94.
- 23 Ibid., p. 3883.
- 24 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3798–99. Mr. Mulroney confirmed to Mr. Wolson that he understood the process of an examination before plea. He remarked that the allegation in the LOR was the object of the proceeding. Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3795.
- 25 In testimony before the Commission, Mr. Kaplan confirmed the above-referenced quotation and testified that it was information he received from Mr. Lavoie that pertained to Mr. Mulroney's examination before plea. Testimony of Mr. William Kaplan, April 23, 2009, pp. 1812–13.
In testimony before the Commission, Mr. Lavoie confirmed that he told Mr. Kaplan about the above-referenced remark. Mr. Lavoie confirmed that the quote accurately reflected what Mr. Mulroney said to him; however, he stated that it was a joke and that "[e]veryone was laughing about it." Testimony of Mr. Luc Lavoie, May 4, 2009, pp. 2739–41, [ENGLISH TRANSLATION], pp. 2735–36.
- 26 Exhibit P-44, tab 98, p. 19.
- 27 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3800.
- 28 In this section, Mr. Mulroney's testimony at the examination before plea is from Exhibit P-48, April 17, 1996, pp. 69–73, 97, 114–16.
- 29 Linden MacIntyre of *the fifth estate* asked Mr. Sheppard how he "could characterize an answer" like "I had never had any dealings with him." Mr. Sheppard responded: "It leaves no doubt that he had no dealings. Whatever relationship existed was not a business relationship of any sort. That's what I would deduce from that answer. He made the statement he had no dealings with Mr. Schreiber. That statement is on the record. And I moved on." Exhibit P-44, tab 105, p. 8.

- 30 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3709–10.
- 31 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3804–05.
- 32 Ibid., p. 3806.
- 33 Exhibit P-48, April 17, 1996, p. 81.
- 34 Ibid., pp. 81–82.
- 35 Ibid., p. 82.
- 36 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3813, 3820.
- 37 Exhibit P-48, April 17, 1996, p. 82.
- 38 Ibid., pp. 82–83.
- 39 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3814–15. When asked later whether he “actually” remembered meeting with Mr. MacKay, Mr. Schreiber, or Mr. Doucet prior to stepping down as prime minister, Mr. Mulroney responded, “No, I didn’t say that, sir.” Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3829.
- 40 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3830.
- 41 Ibid., pp. 3815–16.
- 42 Ibid., pp. 3817–18.
- 43 Ibid., pp. 3818–19. Mr. Mulroney confirmed that if his lawsuit had not been settled and the matter had proceeded to trial, he would have answered truthfully if asked about his relationship with Mr. Schreiber. He stated, “I have indicated that, had I been asked the question, I, of course would have answered truthfully.” Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4531–32.
- 44 Exhibit P-48, April 17, 1996, pp. 82–83.
- 45 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3820–21.
- 46 Exhibit P-48, April 17, 1996, pp. 82–84.
- 47 Ibid., April 17, 1996, p. 84.
- 48 Ibid., pp. 85–86.
- 49 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3687–88.
- 50 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4209.
- 51 Exhibit P-48, April 17, 1996, pp. 86–87.
- 52 Ibid., p. 87.
- 53 Ibid., pp. 87–88.
- 54 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3824–25.
- 55 Exhibit P-48, April 17, 1996, pp. 88–89.
- 56 Ibid., p. 89.
- 57 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3828–29.
- 58 Exhibit P-48, April 17, 1996, p. 90. In his testimony before the Commission, Mr. Mulroney agreed that Mr. Sheppard was clearly asking him about his contact with Mr. Schreiber after he left office. Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3836.
- 59 Exhibit P-48, April 17, 1996, p. 90.
- 60 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3699–3700.
- 61 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3843–44.
- 62 Ibid., pp. 3836–37.
- 63 Exhibit P-48, April 17, 1996, pp. 90–91.
- 64 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3837.
- 65 Ibid., pp. 3840–41.
- 66 Ibid., p. 3841.
- 67 Ibid., p. 3842.
- 68 Ibid., p. 3843.
- 69 Exhibit P-48, April 17, 1996, p. 91.
- 70 Mr. Mulroney confirmed that if Mr. Sheppard had asked him about his retainer with Mr. Schreiber, he would have answered him truthfully. However, he was not there to volunteer information. Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3845.
- 71 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3845–46.
- 72 Ibid., pp. 3847–48.
- 73 Ibid., p. 3848.

- 74 Ibid., p. 3849.
- 75 Exhibit P-48, April 17, 1996, pp. 91–92.
- 76 Ibid., p. 171.
- 77 Ibid., pp. 171–72.
- 78 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3850.
- 79 Ibid., p. 3850.
- 80 Ibid., pp. 3851–52.
- 81 Ibid., p. 3852.
- 82 Ibid., p. 3853.
- 83 Ibid., p. 3854.
- 84 Ibid., p. 3856.
- 85 Ibid., p. 3858.
- 86 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3858–61. Exhibit P-48, April 17, 1996, pp. 171–72.
- 87 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3862.
- 88 Ibid., p. 3864.
- 89 Ibid., pp. 3864–65.

With regard to the Mirabel meeting, Mr. Wolson reviewed with Mr. Mulroney his version of events and those portions and details he conveyed to Mr. Sheppard. Mr. Mulroney confirmed that he did not tell Mr. Sheppard about the August 27, 1993, meeting, nor did he identify it as a meeting where a business transaction occurred. Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, pp. 4076–79, 4084–85.

In describing the Mirabel meeting to Mr. Sheppard, Mr. Mulroney testified that, first, Mr. Schreiber began the conversation by telling him he had retained the services of lawyer Ian Scott to sue the Government of Canada for non-performance in regard to the Bear Head Project; and, second, Mr. Schreiber provided Mr. Mulroney with a copy of the statement of claim. Mr. Mulroney testified during Commission proceedings that Mr. Schreiber provided him with documents that dealt with the vehicles: “the roles that they could play, with what appeared to be some merchandising sales approaches internationally.” The vehicles depicted in these documents carried United Nations insignia. Although he did not mention this to Mr. Sheppard (Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, pp. 4078–80), Mr. Mulroney did explain to Mr. Sheppard that, in the early nineties, the Thyssen project “had evolved into one where vehicles would be made for the United Nations Peacekeeping Forces around the world to protect our Peacekeepers.” Exhibit P-48, April 17, 1996, p. 89.

- 90 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3865.
- 91 Ibid., pp. 3865–66.
- 92 Ibid., pp. 3866–67.
- 93 Ibid., p. 3867.
- 94 Ibid., pp. 3869–70.
- 95 Ibid., May 14, 2009, p. 3870.
- 96 Ibid., p. 3871.
- 97 Ibid., p. 3872.
- 98 Ibid., p. 3872.
- 99 Mr. Mulroney was asked whether he was examined by each of the nine lawyers or solely by Mr. Sheppard. Mr. Mulroney testified that he assumed they were associated in some way, although Mr. Sheppard appeared to be the lead government representative and the RCMP was represented. He stated: “I’m not sure how they divided it up, but the two – I think I was interrogated principally by two or three people, mostly Mr. Sheppard.” Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, p. 3874.
- 100 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3716.
- 101 Exhibit P-44, tab 81.
- 102 Exhibit P-44, tab 81, para. 4.
- 103 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4530.
- 104 Ibid., p. 4531.

- 105 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, p. 640. Exhibit P-44, tab 112, para. 27.
- 106 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4368–69; May 20, 2009, pp. 4593–94. Mr. Mulroney also denied that they discussed that Mr. Schreiber had been asked to transfer funds to “Mr. Mulroney’s lawyer” in Geneva. Mr. Mulroney testified that he never had a lawyer in Switzerland. Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4593–94.
- 107 Exhibit P-22.
- 108 Exhibit P-7(3), tab 3.
- 109 Exhibit P-22.
- 110 Mr. Hladun indicated that the correct date was October 17, 1999, and not October 17, 1997, as indicated in the letter. Testimony of Mr. Robert Hladun, Transcript, April 22, 2009, p. 1741.
- 111 Exhibit P-22.
- 112 Exhibit P-23.
- 113 Ibid.
- 114 Ibid.
- 115 Exhibit P-24. With reference to his fax transmission to Mr. Wakim of March 24, 2005, with email attached, Mr. Hladun stated that he did not have any recollection or assistance to provide regarding the date on which the email was written or sent. Mr. Hladun agreed that the email would have been written on or before March 10, 2005, and that this was the best approximation he could reach. Testimony of Mr. Robert Hladun, Transcript, April 22, 2009, pp. 1739–40.
- 116 Exhibit P-24.
- 117 Mr. Hladun is a lawyer and member of the Alberta bar. He is and has been counsel to Mr. Schreiber for some time. Although certain letters had been made public, Mr. Hladun understood that Mr. Schreiber had not waived solicitor-client privilege with respect to his dealings and conversations with Mr. Hladun. Testimony of Mr. Robert Hladun, Transcript, April 22, 2009, pp. 1736–37.
- 118 Exhibit P-22.
- 119 Testimony of Mr. Robert Hladun, April 22, 2009, pp. 1740–1743. Exhibit P-22.
- 120 Testimony of Mr. Robert Hladun, Transcript, April 22, 2009, pp. 1743–44.
- 121 Exhibit P-23.
- 122 Testimony of Mr. Robert Hladun, Transcript, April 22, 2009, pp. 1744–45. Exhibit P-22.
- 123 Testimony of Mr. Robert Hladun, Transcript, April 22, 2009, pp. 1744–46. Exhibit P-23.
- 124 Ibid., p. 1747.
- 125 Ibid., p. 1748.
- 126 Exhibit P-24.
- 127 Testimony of Mr. Robert Hladun, Transcript, April 22, 2009, pp. 1739–40.
- 128 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3736–38. Exhibit P-44, tab 92.
- 129 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3739.
- 130 Ibid., p. 3738.
- 131 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 650–53. Exhibit P-7(3), tab 19, p. 13.
- 132 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 653–54. Exhibit P-7(3), tab 21, para. 30.
- 133 Mr. Schreiber confirmed that his understanding in the affidavit at paragraphs 30 and 31, that he was being asked to provide assurances by way of an affidavit, came from Mr. Hladun’s letter to Mr. Greenspan of January 26, 2000. Mr. Schreiber qualified this statement by indicating that he had this understanding beforehand: “[W]e spoke quite a while before, then before you see that Mr. Greenspan asked Mr. Hladun for clarification.” Mr. Schreiber noted that he had advised Mr. Greenspan of the request from Mr. Mulroney “long before.” Mr. Schreiber subsequently agreed that the letter from Mr. Hladun confirmed to Mr. Greenspan that Mr. Schreiber had been requested to provide an affidavit. When informed that the letter referenced only “assurances or comfort,” rather than an affidavit, Mr. Schreiber again clarified that his recollection regarding the request for an affidavit arose much earlier. In this regard, Mr. Schreiber confirmed that he appended Mr. Hladun’s letter and nothing else as justifying the statement that he was asked for affidavit assurances.

Exhibit P-7(2), tab 127; Exhibit P-7(3), tab 21. Testimony of Mr. Karlheinz Schreiber, Transcript, April 17, 2009, pp. 958–68.

Mr. Schreiber was referred to another excerpt in Mr. Hladun's letter to Mr. Greenspan, regarding a subsequent phone call from Mr. Mulroney during which Mr. Hladun indicated that he was unsure whether "a letter" would be forthcoming. With reference to this excerpt, Mr. Schreiber eventually confirmed that Mr. Hladun wrote "letter" in this letter to Mr. Greenspan. In this regard, Mr. Schreiber confirmed that Mr. Hladun, and not Mr. Schreiber, had the two telephone conversations with Mr. Mulroney. Notwithstanding Mr. Hladun's letter to Mr. Greenspan, Mr. Schreiber maintained that Mr. Hladun had asked him for an affidavit. Mr. Schreiber ultimately agreed, however, that, in the letter, Mr. Hladun did not refer to a request from Mr. Mulroney for an affidavit; but Mr. Schreiber also indicated that he had told Mr. Greenspan on an earlier occasion that Mr. Mulroney wanted an affidavit and that Mr. Greenspan had said that "as long as I'm your lawyer, you're not signing any affidavits or I cut off your hands." Mr. Schreiber agreed that the evidence provided with his November 7, 2007, affidavit does not support the claim that Mr. Schreiber was asked for an affidavit. Exhibit P-7(2), tab 127; Exhibit P-7(3), tab 21. Testimony of Mr. Karlheinz Schreiber, Transcript, April 17, 2009, pp. 968–73.

134 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 655–56. Exhibit P-7(3), tab 15.

135 Testimony of Mr. Karlheinz Schreiber, Transcript, April 15, 2009, pp. 656–60. Exhibit P-7(2), tab 135; Exhibit P-7(3), tab 21, para. 30.

136 Testimony of Mr. Karlheinz Schreiber, Transcript, April 16, 2009, p. 945. Exhibit P-7(2), tab 127.

137 Exhibit P-7(3), tab 3.

138 Testimony of Mr. Luc Lavoie, May 4, 2009, pp. 2698–99, [ENGLISH TRANSLATION], pp. 2696–97. Mr. Lavoie indicated that he received the call from Mr. Mulroney while he was "rushing to get ready" to leave for an assignment in South America.

139 Exhibit P-46, tab 15; and see Mr. Lavoie's testimony, Transcript, May 4, 2009, p. 2699 [ENGLISH TRANSLATION], p. 2697.

140 Exhibit P-35, tabs 2, 3, 4.

141 Testimony of Mr. Luc Lavoie, May 4, 2009, p. 2700, [ENGLISH TRANSLATION], p. 2698.

142 Exhibit P-35, tab 3, pp. 13–16, 24. For the following two paragraphs: Exhibit P-35, tab 3, pp. 34–35, 37–38.

143 Exhibit P-35, tab 2, pp. 3–4.

144 Ibid., p. 8.

145 Exhibit P-35, tab 3, p. 60; tab 4, p. 2.

146 Testimony of Mr. Luc Lavoie, May 4, 2009, p. 2701, [ENGLISH TRANSLATION], p. 2699.

147 Testimony of Mr. Luc Lavoie, May 4, 2009, pp. 2701–02, [ENGLISH TRANSLATION], p. 2699. Exhibit P-35, tab 2.

148 On October 9, 1999, Mr. Lavoie informed Mr. Cashore that, after they had spoken, he "told him [Mr. Mulroney] everything I knew, but he says, on that basis I'm not speaking with him [Mr. Cashore]. If there is anything more serious than this I may." Exhibit P-35, tab 3, p. 13.

149 Testimony of Mr. Luc Lavoie, May 4, 2009, pp. 2701–02 [ENGLISH TRANSLATION], pp. 2699–2700. Exhibit P-65.

150 Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, p. 2701 [ENGLISH TRANSLATION], pp. 2698–99. Exhibit P-35, tab 3 pp. 30–31.

151 Exhibit P-35, tab 3, p. 32.

152 Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, p. 2704, [ENGLISH TRANSLATION], p. 2702.

153 Testimony of Mr. Luc Lavoie, May 4, 2009, p. 2705, [ENGLISH TRANSLATION], p. 2702. Mr. Lavoie testified that both he and Mr. Mulroney learned of Mr. Pelossi's existence and his allegations by listening to *the fifth estate*. Testimony of Mr. Luc Lavoie, May 4, 2009, p. 2707 [ENGLISH TRANSLATION], p. 2704.

154 Exhibit P-35, tab 3, p. 45. In Mr. Lavoie's conversation with Mr. Cashore on October 13, 1999, Mr. Lavoie made a number of similar comments. Mr. Lavoie responded to Mr. Cashore's request for Mr. Mulroney's perspective on the new documents and information by stating that Mr. Mulroney's perspective was clear: "[H]e's never received a penny connected with any of this stuff"; and by

noting that Mr. Mulroney, “the former Prime Minister of Canada,” gave his perspective under oath that “he had nothing to do with this transaction, and he received nothing.” Mr. Lavoie also said to Mr. Cashore: “If anybody has been using his name, well, that person should, you know, that person should bear the blame for that”; and “[T]here’s no other way of looking at it ... There is no possible analysis.” Mr. Cashore then reiterated his opinion that he wished to determine the recipients of the money: “[Y]ou know, my opinion is that the story of where the money went, wherever it went, is an important story.” Exhibit P-35, tab 4, pp. 8–12.

155 Testimony of Mr. Luc Lavoie, May 4, 2009, pp. 2703–06, [ENGLISH TRANSLATION], pp. 2701–03.

156 Testimony of Mr. Luc Lavoie, May 4, 2009, p. 2709, [ENGLISH TRANSLATION], pp. 2706–07.

157 Testimony of Mr. Luc Lavoie, May 4, 2009, p. 2710, [ENGLISH TRANSLATION], p. 2707.

Mr. Lavoie also confirmed the following statement that he made to Mr. Cashore: “[T]o think otherwise is really not to know Mulroney. He is too smart to do something like that.” Testimony of Mr. Luc Lavoie, May 4, 2009, p. 2710, [ENGLISH TRANSLATION], p. 2707.

158 Exhibit P-46, tab 15.

159 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, pp. 3734–36.

160 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4544. Exhibit P-44, tab 124. The Department of National Revenue became the Canada Customs and Revenue Agency (CCRA) in 1999 and the Canada Revenue Agency (CRA) in 2003.

161 Exhibit P-44, tab 124.

162 Ibid.

163 Ibid.

164 Exhibit P-44, tab 124. With reference to this statement in Mr. Lefebvre’s letter, Mr. Mulroney stated that he did not have all the credit card receipts and the travel documents on which some of the expenses had been noted. Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4458–60.

165 Exhibit P-44, tab 124.

166 Mr. Lefebvre also requested in the letter that he be present for Mr. Lussier’s meeting with the director of the Montreal office to inform the director of the voluntary disclosure. Exhibit P-44, tab 124.

167 Exhibit P-44, tab 124.

168 Ibid.

169 Testimony of Mr. Brian Mulroney, Transcript, May 13, p. 3748. Exhibit P-49, Avis de Nouvelle Corisation [Notice of Reassessment] and Revenus d’entreprise [business and professional income].

170 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4375–76.

171 Ibid., p. 4430.

172 Ibid., p. 4436.

173 Ibid., p. 4436.

174 Testimony of Mr. Brian Mulroney, Transcript, May 13, 2009, p. 3755.

175 Ibid., p. 3756.

176 Exhibit P-46, tab 26, Information Circular 85-1R2.

177 Mr. Mulroney stated it is possible that, when he explained the background of the arrangement and the location of the money to Mr. Lefebvre, he (Mr. Lefebvre) concluded that the amount should be held in reserve until he spoke with the governments about it. Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4552–55.

Mr. Mulroney is not aware of any income being reported to American authorities, and, in his understanding, this reporting was not required. Ibid., p. 4555.

178 In this regard, Mr. Mulroney did not think that any other document, aside from the mandate document, dealt with the three-year mandate. Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4446.

179 Ibid., p. 4447. See also pp. 4414–16. In explaining why he did not correct the duration of the retainer in the mandate document, by stating that it was an ongoing retainer rather than one that lasted for three years, Mr. Mulroney stated that the three-year interruption for the Airbus matter had affected him during that time frame and that he did not sit down to calculate the mandate’s extent that day.

180 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4447.

181 Ibid., p. 4426.

182 Exhibit P-44, tab 124.

- 183 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4459.
- 184 Ibid., p. 4460.
- 185 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, p. 4627.
- 186 In this regard, Mr. Doucet has no recollection of forwarding the mandate document to Mr. Mulroney, either directly or through lawyers, before the fall of 2007.
- 187 Testimony of Mr. Fred Doucet, Transcript, April 28, 2009, pp. 2388–90.
- 188 Ms. Sauvé has a BA in accounting and is a certified general accountant (CGA). She worked in the voluntary disclosure program from 2001 to September 2006 and is familiar with the policies that were in force and their application in the year 2000. On May 21, 2009, Ms. Sauvé was a team leader with the Criminal Investigations Program in Montreal of the Canada Revenue Agency (CRA). Testimony of Ms. Christiane Sauvé, Transcript, May 21, 2009, pp. 4744–45, [ENGLISH TRANSLATION], pp. 4743–45.
- 189 A voluntary omission is one where a taxpayer decided not to include the income earned in his or her tax return. An involuntary omission is one where a taxpayer forgot to declare the income or did not know it was necessary until an accountant, for example, explained that it was income that should have been declared. Testimony of Ms. Christiane Sauvé, Transcript, May 21, 2009, pp. 4765–66, [ENGLISH TRANSLATION], pp. 4763–64.
- 190 Ms. Sauvé testified in this regard that she referred to Information Circular 85-1R2 (found in Exhibit P-46, tab 26) to set out the objectives and criteria that were in force. Testimony of Ms. Christiane Sauvé, Transcript, May 21, 2009, p. 4746, [ENGLISH TRANSLATION], p. 4745.
- 191 Testimony of Ms. Christiane Sauvé, Transcript, May 21, 2009, pp. 4746–49, [ENGLISH TRANSLATION], pp. 4745–48. Exhibit P-46, tab 26, Information Circular 85-1R2, p. 1. With reference to Exhibit P-59, pp. 1–2, Ms. Sauvé confirmed that, as a result of the voluntary disclosure program, taxable income increased by \$49.5 million at the Montreal office for the fiscal year ended March 31, 2000. Approximately one-quarter of the federal tax recovered for the voluntary disclosure program was at the Montreal office (Montreal office: \$11.5 million; national total: \$42 million). Testimony of Ms. Christiane Sauvé, May 21, 2009, pp. 4750–52, [ENGLISH TRANSLATION], pp. 4750–51.
- 192 Testimony of Ms. Christiane Sauvé, Transcript, May 21, 2009, pp. 4754–55, [ENGLISH TRANSLATION], pp. 4753–54. Exhibit P-46, tab 26, Information Circular 85-1R2.
- 193 Testimony of Ms. Christiane Sauvé, Transcript, May 21, 2009, pp. 4756–57, [ENGLISH TRANSLATION], pp. 4755–56. Exhibit P-46, tab 26, Information Circular 85-1R2.
- 194 Testimony of Ms. Christiane Sauvé, Transcript, May 21, 2009, pp. 4757–58, [ENGLISH TRANSLATION], pp. 4756–57. Exhibit P-46, tab 26, Information Circular 85-1R2.
- 195 Mr. Adams has a BA in mathematics from the University of Waterloo, as well as a specialization in accounting, and has worked at the CRA for 32 years. He is the director general of income tax rulings, “a program where tax lawyers and accountants within the CRA analyze business transactions and interpret the law” in order to give direction to companies for filings and to CRA officials on how to audit, assess, or make decisions related to litigation. Mr. Adams is familiar with the relevant sections of the *Income Tax Act* and their application at the CRA. Testimony of Mr. Wayne Adams, Transcript, May 20, 2009, p. 4662.
- 196 Testimony of Mr. Wayne Adams, Transcript, May 20, 2009, p. 4663. In Exhibit P-52, tabs 1–3, sections 9(1), 12(1)(a), and 20(1)(m), provide:
- 9(1) Income
Subject to this Part, a taxpayer’s income for a taxation year from a business or property is the taxpayer’s profit from that business or property for the year.
- 12(1) Income inclusions
There shall be included in computing the income of a taxpayer for a taxation year as income from a business or property such of the following amounts as are applicable:
- (a) services, etc., to be rendered [or goods to be delivered] any amount received by the taxpayer in the year in the course of a business
- (i) that is on account of services not rendered or goods not delivered before the end of the year or that, for any other reason, may be regarded as not having been earned in the year or a previous year, or
- (ii) under an arrangement or understanding that it is repayable in whole or in part on the return or

resale to the taxpayer of articles in or by means of which goods were delivered to a customer.

20(1) Deductions permitted in computing income from business or property

Notwithstanding paragraphs 18(1)(a), (b) and (h), in computing a taxpayer's income for a taxation year from a business or property, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may be reasonably be regarded as applicable thereto:

- (m) reserve in respect of certain (future) goods and services – subject to subsection (6) where amounts described in paragraph 12(1)(a) have been included in computing the taxpayer's income from a business for the year or a previous year, a reasonable amount as a reserve in respect of
 - (i) goods that it is reasonably anticipated will have to be delivered after the end of the year,
 - (ii) services that it is reasonably anticipated will have to be rendered after the end of the year,
 - (iii) periods for which rent or other amounts for the possession or use of land or chattels have been paid in advance, or
 - (iv) repayments under arrangements or understandings of the class described in subparagraph 12(1)(a)(ii) that it is reasonably anticipated will have to be made after the end of the year on the return or resale to the taxpayer of articles other than bottles[.]

197 Testimony of Mr. Wayne Adams, Transcript, May 20, 2009, p. 4666.

198 Ibid., p. 4667.

199 Ibid., p. 4668.

200 Ibid., p. 4670.

201 Ibid.

202 Mr. Adams noted that this was the general rule, although there is an exception for certain professional businesses. Testimony of Mr. Wayne Adams, Transcript, May 20, 2009, p. 4670. See also Exhibit P-52, tab 7, CRA Income Tax Interpretation Bulletin No. IT-457R – Election by Professionals to Exclude Work in Progress from Income (July 15, 1988).

203 Testimony of Mr. Wayne Adams, Transcript, May 20, 2009, p. 4712.

204 Ibid., pp. 4712–13.

205 Exhibit P-65. Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, p. 2695, [ENGLISH TRANSLATION], p. 2693.

206 Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, pp. 2719–21, [ENGLISH TRANSLATION], pp. 2716–17.

207 Ibid., p. 2721, [ENGLISH TRANSLATION], p. 2718.

208 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4245–46.

209 Exhibit P-25, tab 16, p. 2. Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4246–47.

210 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4247.

211 Ibid., p. 4249.

212 Ibid., pp. 4246–49.

213 Exhibit P-25, tabs 15 and 16.

214 Exhibit P-35, tab 7.

215 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1914–15.

216 Exhibit P-35, tabs 10–11.

217 Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, pp. 2748–50, [ENGLISH TRANSLATION], pp. 2743–45.

218 Exhibit P-35, tab 14, p. 2.

219 Ibid.

220 Exhibit P-35, tab 18.

221 Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, pp. 2741–44, [ENGLISH TRANSLATION], pp. 2736–39. See also Exhibit P-35, tab 18.

222 Testimony of Mr. Brian Mulroney, Transcript, May 20, 2009, pp. 4606–07.

223 Ibid., p. 4609.

224 Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, p. 2780, [ENGLISH TRANSLATION], p. 2773.

225 Mr. Lavoie noted, however, that requests rarely arrived in the form of a letter, but generally came to him directly by telephone. He stated that letters came only from Radio-Canada and the CBC.

- Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, pp. 2789–91. [ENGLISH TRANSLATION], pp. 2781–83. See, for example, Exhibit P-35, tab 12, a letter from Mr. Lavoie to Mr. MacIntyre (*the fifth estate*, CBC) of March 1, 2005: “As a follow-up to our conversations of last week regarding the letter sent to The Right Honourable Brian Mulroney by your colleague Harvey Cashore ...”
- 226 Exhibit P-25, tab 15; Exhibit P-35, tab 7, p. 1, and tab 9. Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, p. 2780, [ENGLISH TRANSLATION], p. 2773.
- 227 Testimony of Mr. Luc Lavoie, Transcript, May 4, 2009, p. 2780, [ENGLISH TRANSLATION], p. 2773.
- 228 Ibid., p. 2796, [ENGLISH TRANSLATION], p. 2788.
- 229 Ibid., p. 2797, [ENGLISH TRANSLATION], p. 2789.
- 230 Ibid., pp. 2798–99, [ENGLISH TRANSLATION], pp. 2790–91.
- 231 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, p. 3383.
- 232 Ibid., pp. 3383–84.
- 233 Ibid., p. 3385.
- 234 Ibid.
- 235 Ibid., p. 3386.
- 236 Ibid.
- 237 Ibid., p. 3387.
- 238 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4474.
- 239 Ibid., p. 4475.
- 240 Ibid., pp. 4475–76.
- 241 Ibid., p. 4477.
- 242 Ibid., pp. 4477–78.
- 243 Ibid., p. 4478.
- 244 Ibid., pp. 4479–80.
- 245 Ibid., p. 4480.
- 246 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1756–57, 1922. In testimony before the Commission, Mr. Mulroney acknowledged that Mr. Kaplan is a lawyer and author, and he accepted that he is a legal historian. Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4210.
- 247 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4008; May 19, 2009, pp. 4213–14.
- 248 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4011.
- 249 Ibid., p. 4012.
- 250 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1807. Exhibit P-25, tab 6.
- 251 Testimony of Mr. Brian Mulroney, Transcript, May 14, 2009, pp. 3879–80.
- 252 Ibid., p. 3880.
- 253 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1794, 1862.
- 254 Ibid., pp. 1862–63.
- 255 Exhibit P-44, tab 99.
- 256 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1863.
- 257 Ibid., p. 1863.
- 258 Ibid., pp. 1905–06.
- 259 Ibid., p. 1761.
- 260 Ibid., p. 1933.
- 261 Ibid., pp. 1762–63.
- 262 Exhibit P-25, tab 1.
- 263 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1766.
- 264 Exhibit P-25, tab 22, p. 13.
- 265 Exhibit P-25, tab 22, *A Secret Trial*, p. 13. Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1917–19.
- 266 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1774–45. Exhibit P-26, p. 6.
- 267 Exhibit P-27.
- 268 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1776–77. Exhibit P-25, tab 22, *A Secret Trial*, p. 13.
- 269 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1777.

- 270 Ibid., p. 1778.
- 271 Ibid., pp. 1942–43.
- 272 Ibid., p. 1918.
- 273 Ibid., p. 1919.
- 274 Ibid., pp. 1943–44.
- 275 Ibid., p. 1941.
- 276 Ibid., p. 1944.
- 277 Ibid., pp. 1911–15.
- 278 Exhibit P-25, tab 15.
- 279 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1912.
- 280 Ibid., p. 1889.
- 281 Ibid., pp. 1887–88.
- 282 Ibid., p. 1888.
- 283 Ibid., p. 1889. Exhibit P-27.
- 284 Ibid., pp. 1890–91. Exhibit P-27.
- 285 Ibid., pp. 1891–92.
- 286 Ibid., p. 1892.
- 287 Ibid., p. 1894.
- 288 Ibid., p. 1895.
- 289 When Mr. Pratte asked Mr. Kaplan whether he is called to the bar in the Province of Quebec, Mr. Kaplan responded, “No. That’s why I just said that I had no idea.” Mr. Pratte then said, “Well, that is maybe something that we should figure into the context.” Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1895.
- 290 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1900–01, 1934.
- 291 Mr. Kaplan confirmed that he approached Mr. Schreiber before the publication of his article of November 10, 2003. According to Mr. Kaplan, he vividly recalls the meeting, which took place on either the Thursday or Friday before publication, in which Mr. Schreiber confirmed to him that he had paid Mr. Mulroney \$300,000. Mr. Kaplan cannot locate his notes of that conversation. Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1904. Mr. Pratte suggested that, when Mr. Kaplan first put the payments to Mr. Schreiber in 2002, he (Mr. Schreiber) did not confirm them. According to Mr. Kaplan, Mr. Schreiber did not formally confirm the payments at that point, but “he knew that I knew.” When Mr. Pratte suggested, “[B]ut that’s not acknowledging – because you had told him that in 2002,” Mr. Kaplan responded, “Sure.” Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1905.
- 292 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1908–09.
- 293 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4296.
- 294 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4009.
- 295 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4206–07.
- 296 Testimony of Mr. Brian Mulroney, Transcript, May 15, 2009, p. 4010.
- 297 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4302–03.
- 298 Ibid., p. 4304.
- 299 Exhibit P-25, tab 2. Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1785.
- 300 Exhibit P-25, tab 15,
- 301 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1785–86. Exhibit P-25, tab 15.
- 302 Exhibit P-25, tab 2.
- 303 Ibid.
- 304 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4229.
- 305 Ibid., p. 4230. Exhibit P-25, tab 2.
- 306 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1790.
- 307 Exhibit P-25, tab 3.
- 308 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4236–37.
- 309 Exhibit P-25, tab 4.
- 310 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1795. Exhibit P-25, tab 5.
- 311 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1796.

- 312 Exhibit P-25, tab 5.
- 313 Ibid. Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1797.
- 314 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1797. Exhibit P-25, tab 5.
- 315 Exhibit P-25, tab 5.
- 316 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1798–99. Exhibit P-25, tab 5.
- 317 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1799–1802. Exhibit P-25, tab 5.
- 318 Exhibit P-25, tab 5. In this regard, Mr. Kaplan confirmed during Commission proceedings that Mr. Mathias told him that Mr. Mulroney received \$300,000 from Mr. Schreiber.
- 319 Exhibit P-25, tab 5. Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1800–01.
- 320 According to Mr. Mulroney, he was not aware in 2001 that Mr. Mathias had prepared a story (never published) which indicated that he (Mr. Mulroney) had received cash payments from Mr. Schreiber. He testified that he was made aware of the article about a year or two later, but that he never saw it. Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4254.
- 321 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4238.
- 322 Exhibit P-7(3), tab 2.
- 323 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4239.
- 324 Ibid., p. 4252.
- 325 Ibid., p. 4254.
- 326 Ibid., p. 4257.
- 327 Exhibit P-25, tab 6.
- 328 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1806.
- 329 Exhibit P-25, tab 6.
- 330 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4259. Exhibit P-25, tab 6.
- 331 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1810. Exhibit P-25, tab 6.
- 332 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1810. Exhibit P-25, tab 6. The CBC *fifth estate* chronology notes that, on January 24, 2007, the *Globe and Mail* revealed that the Department of Justice pondered setting aside Mr. Mulroney's settlement in light of the *fifth estate* revelations. See http://www.cbc.ca/fifth/unauthorizedchapter/timeline_2007.html
- 333 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1810–11; Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4259. Exhibit P-25, tab 6.
- 334 Mr. Wolson asked Mr. Mulroney what the “lawsuit” would be about, and Mr. Mulroney said, “Well, the same thing I made a lawsuit of when Mr. Schreiber sued me in Toronto on this kind of issue for the funds and said the amount now was \$545,000 [Mr. Schreiber's amended statement of claim sought \$300,000 plus interest; Exhibit P-7 (3), tab 17].” Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4263. When Mr. Wolson asked again what the lawsuit would be about, Mr. Mulroney stated, “This is what – the amount was inaccurate.” He continued tangentially with regard to the termination of Mr. Schreiber's lawsuit in Ontario, and then Mr. Schreiber's withdrawal of his subsequent lawsuit in Montreal.
- 335 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4265, 4268. Mr. Mulroney remarked in this regard, however, that he is “at somewhat of a disadvantage because I don't have the context of the entire discussion that took place.”
- 336 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4271.
- 337 Ibid., pp. 4273–74.
- 338 Exhibit P-25, tab 7.
- 339 Ibid.
- 340 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1823.
- 341 Ibid. Exhibit P-25, tab 7.
- 342 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1823–24.
- 343 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4217–18.
- 344 Ibid., p. 4270.
- 345 Exhibit P-25, tabs 8, 9, 23. Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1826–27.
- 346 Exhibit P-25, tabs 8 and 9. Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1825–27.
- 347 Exhibit P-25, tab 23. Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1794.
- 348 Exhibit P-25, tab 23, p. 2.

- 349 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1769. Exhibit P-25, tab 17.
- 350 Exhibit P-25, tab 23, p. 2.
- 351 *Ibid.*, p. 3.
- 352 *Ibid.*
- 353 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4311–12.
- 354 Exhibit P-25, tab 23, p. 3.
- 355 With reference to the examination before plea, Mr. Kaplan wrote:
 The examination on discovery, as it is known in Quebec, began on April 17, 1996, and took about a day and a half. Mulroney was asked, and answered a lot of questions about Schreiber and his involvement with Schreiber's efforts on behalf of Thyssen to build the light armoured vehicles in Cape Breton.
 Obviously, any Canadian prime minister would be interested in bringing manufacturing jobs to an area with one of the country's highest unemployment rates. Mulroney was repeatedly asked about it and repeatedly made the point that it was his government that decided not to go ahead with the project. A number of underlying political and economic assumptions just didn't make sense.
 Mulroney observed that Schreiber was indefatigable. No matter how many times he was turned down, he would come back with a different twist or spin in order to attract the government's interest ...
 ... not once in the hundreds of questions put to the former prime minister, was he ever asked point-blank whether he had taken money from Schreiber. [Exhibit P-25, tab 23, p. 3.]
- 356 Exhibit P-25, tab 23, p. 3.
- 357 Mr. Kaplan noted in his article that Mr. Mulroney's statement that he "had never had any dealings with him" was "not quite correct." He noted that Mr. Mulroney "had never had any dealings with him on Airbus. He had never had any dealings with him on the helicopter purchase. He had some prime ministerial dealings with him on Bearhead – he turned down the project and a request for federal money. But he had dealings with him while in office and since." Exhibit P-25, tab 23, p. 4.
- 358 Exhibit P-25, tab 23, pp. 3–4.
- 359 Mr. Kaplan noted that "[a]n explanation has been offered about why Mulroney was not more forthcoming, given his commercial relationship with Schreiber. Earlier, he had offered to come to Ottawa and to make a complete financial disclosure – income tax returns, business records, everything – to government and RCMP officials. He was turned down flat. His envoy was advised: We are just beginning our investigation." Exhibit P-25, tab 23, p. 4.
- 360 Exhibit P-25, tab 23, p. 4.
- 361 Exhibit P-25, tab 5; tab 23, p. 4.
- 362 Exhibit P-25, tab 23, p. 4. Mr. Kaplan wrote that "[t]he government lawyers, Mulroney counsel Jacques Jeansonne explains, had no entitlement to ask Mulroney any questions about this payment, and Jeansonne has a technical explanation about the operation of the rules of civil procedure in Quebec and how those rules, properly applied to this case would have, if a question had been asked, been interpreted to disentitle the government lawyers to an answer." Exhibit P-25, tab 23, p. 4.
- 363 Exhibit P-25, tab 23, p. 4.
- 364 *Ibid.*, p. 5.
- 365 *Ibid.*
- 366 *Ibid.* Mr. Kaplan recounted in his article that Mr. Mulroney insists that everything he has done is "clean as a whistle" and that he stated, "I can also tell you that I have declared every cent that I have ever received and I have paid income tax on all monies owing." Mr. Kaplan remarked that Mr. Mulroney said, "My affairs have been above board and proper, and I am not concerned about any of the legal implications whatsoever." Mr. Kaplan noted that Mr. Mulroney repeatedly said that the RCMP investigated thoroughly and gave him an apology letter, when, in reality, the RCMP simply announced the end of its criminal investigation. Mr. Kaplan continued: "[B]ut, again, interpretation is everything."
- 367 Exhibit P-25, tab 22, p. 136.
- 368 *Ibid.*, p. 161.
- 369 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1814.
- 370 *Ibid.*, pp. 1814–15.

- 371 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4240.
- 372 Ibid., p. 4241.
- 373 Ibid., p. 4242.
- 374 Ibid., p. 4243.
- 375 Ibid., p. 4245.
- 376 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1827–28.
- 377 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4280.
- 378 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1832. Exhibit P-25, tab 22, p. 137.
- 379 Exhibit P-25, tab 22, p. 137. Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1828–31.
- 380 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4285.
- 381 Ibid., pp. 4285–86.
- 382 Ibid., pp. 4287, 4289–90. When Mr. Wolson asked Mr. Mulroney again whether he denied making the remark that he regretted any inconvenience to Mr. Kaplan, Mr. Mulroney began to discuss how Mr. Kaplan had not told the Commission that the plan had been to publish four articles rather than three. Mr. Mulroney testified that he was “counting very heavily on the fourth, which is why I cooperated with him in regard to the others.” Mr. Mulroney was asked several questions pertaining to this fourth article, given that his reference to it was the first time that the notion of a fourth article was discussed before the Commission. Mr. Mulroney testified that, based on the nature of the information that was conveyed to Mr. Kaplan and others, he reasonably concluded, as he believed one would, that another article was coming. He indicated that he had never seen a draft of a fourth article, nor had he seen a manuscript. Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, pp. 4287, 4309–10.
- 383 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1831–32.
- 384 Exhibit P-25, tab 22, p. 137. Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1831–32.
- 385 Testimony of Mr. Brian Mulroney, Transcript, May 19, 2009, p. 4291.
- 386 Ibid., p. 4292.
- 387 Exhibit P-25, tab 11. Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1842.
- 388 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, p. 1842.
- 389 Testimony of Mr. Pat MacAdam, Transcript, April 20, 2009, pp. 1444–45. Mr. MacAdam then worked in the High Commission in London, England. When he returned to Canada, he worked for GCI as the director of the company and a senior consultant.
- 390 Exhibit P-25, tab 19.
- 391 Exhibit P-25, tab 20.
- 392 Ibid.
- 393 Testimony of Mr. William Kaplan, Transcript, April 23, 2009, pp. 1953–55.
- 394 Ibid., pp. 1955–56.
- 395 Ruling on the Application by the Right Honourable Brian Mulroney for Clarification on Ruling on Standards of Conduct, April 1, 2009, para. 15
- 396 Exhibit P-48, April 17, 1996, p. 90.

Appropriateness

I come now to a central issue in this Inquiry: the appropriateness of Mr. Mulroney's conduct. The first part of this analysis deals with the appropriateness of Mr. Mulroney's business and financial dealings with Mr. Schreiber. The second part looks at whether Mr. Mulroney's reporting and disclosure of those dealings and the payments he received from Mr. Schreiber were appropriate. And the third part considers whether ethical rules and guidelines were in place which related to Mr. Mulroney's business and financial dealings with Mr. Schreiber, and, if so, whether they were followed. These matters fall within Questions 11 through 13 of the Commission's Terms of Reference:

11. *Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?*
12. *Was there appropriate disclosure and reporting of the dealings and payments?*
13. *Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?*

Overview

In accordance with the mandate conferred on me under the Terms of Reference, this Inquiry has investigated the business and financial dealings of Mr. Schreiber and Mr. Mulroney in relation to the Bear Head Project and the payments made by Mr. Schreiber to Mr. Mulroney in 1993 and 1994.

In Chapter 6, I rejected Mr. Schreiber's contention that the agreement between Mr. Mulroney and him was to promote Thyssen's vehicles and the Bear Head Project domestically. I concluded that Mr. Schreiber retained Mr. Mulroney to promote the sale in the international market of military vehicles produced by Thyssen.

However, that is not the end of the Inquiry. I must also determine whether those business and financial dealings were appropriate and whether there was appropriate disclosure and reporting of the dealings and the payments.

As I held earlier, in a ruling on standards of conduct released on February 25, 2009, my task in measuring appropriateness is to determine whether Mr. Mulroney, in the business and financial dealings he had with Mr. Schreiber and in disclosing these dealings and payments, conformed with the highest standards of conduct "conduct that, objectively, is so scrupulous it can bear the closest public scrutiny." When Mr. Mulroney was prime minister, as we will see below, he expected this same high standard from his ministers. And, indeed, it is the standard required to ensure confidence by Canadians in the high office of ministers of the Crown and their members of parliament. I have no difficulty in concluding that Mr. Mulroney failed to meet this standard: his conduct was inappropriate. I explain in this chapter the particular areas in which I find that Mr. Mulroney failed in meeting that standard.

The Applicable Standard

On November 12, 2008, before the start of hearings in the Factual Inquiry, this Commission issued a Notice of Hearing on Standards of Conduct in which the four parties to the Factual Inquiry were invited to make submissions in relation to Questions 11, 12, and 13 of the Terms of Reference. As stated in the Ruling on Standards of Conduct, I sought the parties' submissions on the following matters:

1. In relation to Questions 11 and 12, what are the applicable norms and standards in interpreting whether Mr. Mulroney's conduct was "appropriate" in the circumstances?
2. In relation to Question 13, what were the ethical rules and guidelines that were applicable to the business and financial dealings between Mr. Mulroney and Mr. Schreiber?

The Attorney General of Canada, Mr. Mulroney, and Mr. Schreiber, through their counsel, all filed written submissions in response to the Notice of Hearing. A public hearing was held, and oral submissions were heard, on January 7, 2009. I issued my ruling on the standards of conduct (Standards Ruling) on February 25, 2009. A copy of the Standards Ruling is found at the end of this chapter as Appendix 9-1.

In the Standards Ruling, I emphasized that I am not permitted to draw conclusions about civil or criminal responsibility. The Terms of Reference specifically prohibit me from expressing any such conclusion. I stated that the particular standards that may

inform my conclusion as to whether conduct was or was not appropriate must be standards that were in place at the time of the conduct concerned.

During the hearing on standards, I was referred by counsel to the following legislation as containing ethical rules and guidelines that could potentially be relevant, depending on my findings in the Factual Inquiry: the *Parliament of Canada Act*,¹ the *Financial Administration Act*,² the *Criminal Code*,³ the *Excise Tax Act*,⁴ and the *Income Tax Act*.⁵ In addition to this legislation, I was referred to Standing Orders of the House of Commons, Nos. 21 and 23(2); and the 1985 Conflict of Interest and Post-Employment Code for Public Office Holders⁶ (1985 Ethics Code). The 1985 Ethics Code applied to public office holders, defined to include ministers of the Crown.

When he tabled the 1985 Ethics Code in the House of Commons on September 9, 1985, Mr. Mulroney said:

It is a great principle of public administration – I could even say an imperative – that to function effectively the government and the public service of a democracy must have the trust and confidence of the public they serve. In order to reinforce that trust, the government must be able to provide competent management *and, above all, to be guided by the highest standards of conduct.* [Emphasis added.]

On that same day, Mr. Mulroney wrote an “open letter” to all members of parliament and senators, describing the tabling in the House of Commons of documents including the 1985 Ethics Code. He used identical language in his letter.

I was also referred to a document entitled *Guidance for Ministers*,⁷ which was published by the Privy Council Office in October 1988 and circulated to all ministers by Prime Minister Mulroney. The Preface of *Guidance for Ministers* states: “The Prime Minister has asked that every Minister should receive and be guided by [the] advice” contained in the document. Presumably, then, what is contained in the *Guidance for Ministers* (the guide), and in particular in Part V of the guide, entitled “Standards of Conduct,” can be taken to reflect the standards that Prime Minister Mulroney expected from ministers with regard to their conduct.

The objective of the 1985 Ethics Code, as set out in section 4, was “to enhance public confidence in the integrity of public office holders and the public service.” In furtherance of this goal, public office holders had “an obligation to act in a manner that [would] bear the closest public scrutiny” – an obligation that, as explained in section 7(b), was “not fully discharged by simply acting within the law.” This principle was incorporated into the 1988 *Guidance for Ministers*, which provided:

The Prime Minister establishes *standards of conduct for Ministers*, subject always to the basic requirements of law. Ministers should recognize that the Prime Minister will hold them accountable for maintaining, and appearing to maintain, a standard of propriety in the conduct of public business stricter than required by law or expected in other occupations. [Emphasis in original.]

With respect to Question 12 of the Terms of Reference, which concerns whether there was appropriate disclosure, I was referred by Richard Auger, counsel for Mr. Schreiber, to the *Excise Tax Act*. I was also referred by Paul Vickery, counsel for the Government of Canada, to section 220(3.1) of the *Income Tax Act*, the legislative underpinning of the voluntary disclosure program, which permits the minister of national revenue to waive penalties and interest in certain circumstances. In the Standards Ruling I stated:

Question 12, which calls on me to determine whether there was appropriate disclosure and reporting of the dealings and payments, necessarily encompasses ... disclosure and reporting to the Canada Revenue Agency, not for the purpose of determining any civil or criminal liability under that statute [which I am not permitted to do,] but as part of the necessary context in determining whether the steps taken by Mr. Mulroney were appropriate.

In the Standards Ruling, I expressly rejected the submission by Guy Pratte, counsel for Mr. Mulroney, that what is “appropriate,” as referred to in Questions 11 and 12, can be assessed only with reference to the 1985 Ethics Code. As I noted, “this Inquiry is ultimately concerned with the good government of Canada. Therefore, if I accepted an interpretation of my mandate that did not respond to the directives to me contained in the Terms of Reference, I would fail [to carry out] my duty as Commissioner.”

Indeed, “Questions 11 and 12 operate at a broader level than Question 13, with its express reference to ethical rules and guidelines.” In my Standards Ruling, I stated my belief that

the Governor in Council did not intend that I confine my assessment respecting the appropriateness, or otherwise, of Mr. Mulroney’s conduct to determining whether he had breached the 1985 Ethics Code ... [C]onduct in breach of an applicable ethics code by a prime minister, former prime minister, or member of parliament is almost surely conduct that is capable of being described as inappropriate.

However, the converse of that proposition cannot be true. Even if the conduct of a prime minister, a cabinet minister, or a member of parliament is not in breach of a code of ethics, it does not necessarily follow that the conduct is appropriate. For example, there may well be conduct that is not covered by the 1985 Ethics Code, yet which anyone would describe as inappropriate.

In the Standards Ruling, I noted:

There are two other reasons why “appropriate” in Questions 11 and 12 cannot be limited to the 1985 Ethics Code.

First, by its express terms, the 1985 Ethics Code applies to public office holders, who are defined to include ministers of the Crown ... The 1985 Ethics Code did not apply to members of parliament ... Mr. Mulroney stepped down as prime minister on June 24, 1993, and sat as a member of parliament [until September 8, 1993, when an election was called for October 1993]... If my consideration of “appropriate”

were confined to the 1985 Ethics Code, I would be precluded from consideration of Mr. Mulroney's conduct [as a member of parliament] ... Nothing in the Terms of Reference imposes such a limitation. Indeed, an interpretation of this nature would be contrary to Question 11, which expressly refers to Mr. Mulroney's position as a current or former prime minister *and* member of parliament.

Second, section 60 of the 1985 Ethics Code sets out a limitation period for ministers of the Crown after departure from office. For a period of two years after leaving office, ministers are prohibited from undertaking the activities described in subsections 60 (a) through (c). Question 11 directs me to investigate and report on whether the business and financial dealings were appropriate considering Mr. Mulroney's position. Question 12 directs me to determine whether there was appropriate disclosure of the dealings and the payments.

The Terms of Reference do not limit me to "investigating these matters to a two-year period after Mr. Mulroney stepped down as prime minister."

Part V of the *Guidance for Ministers* instructs ministers that their "rigorous compliance with the full letter and spirit of these [particular] standards ... is of the utmost importance." Under the heading "High Expectations," the following statement is found at page 45:

There is an obligation not simply to observe the law, but to act both in official and personal capacities *in a manner so scrupulous that it will bear the closest public scrutiny.* [Emphasis added.]

Later, on the same page, the following advice is given to ministers:

A practical test is to ask whether your conduct, or that of your staff, could cause any embarrassment or be difficult to justify to the public, should it be raised in Parliament or reported in the press.

As I noted in the Standards Ruling, "those two statements are indicative of the expectation Prime Minister Mulroney (as he then was) had respecting the standard of conduct to be maintained by him and by ministers serving in the cabinet of which he was the leader."

Because of the degree of trust and confidence imposed by the people of Canada in the prime minister, cabinet ministers, and members of parliament, I believe they are entitled to expect the conduct of those holders of public office, whether in their official or their personal capacity, to be exemplary.

In the Standards Ruling, I drew the conclusions as to the standard I should apply when assessing the appropriateness of Mr. Mulroney's conduct. I set out my conclusions here in full, because I think they are important for an appreciation of the matters before me in this chapter:

[60] In assessing whether Mr. Mulroney's conduct or behaviour was appropriate, I will be guided by the standard that he himself set during his tenure as the holder of the highest elected office in Canada. It is noteworthy that at page 46 of *Guidance for*

Ministers, it is stated that “the *Prime Minister will hold Ministers personally accountable* for acting in accordance with the spirit of the highest standards of conduct, as well as complying with the letter of the Government’s rules” [emphasis in original]. As the person responsible for applying standards of ethics to his ministers while he was prime minister, Mr. Mulroney must be taken to understand fully what those standards were.

[61] I intend to determine, on an objective basis, whether Mr. Mulroney, in the business and financial dealings he had with Mr. Schreiber (if any) and in disclosing these dealings and payments (if any), conformed with the highest standards of conduct – conduct that, objectively, is so scrupulous that it can bear the closest possible scrutiny.

[62] A finding of inappropriateness will be made only if there is credible evidence that Mr. Mulroney acted in a manner that falls short of conduct that, objectively, is so scrupulous that it can bear the closest possible scrutiny. This is the standard that will apply to whatever business and financial dealings Mr. Mulroney may have had with Mr. Schreiber. Similarly, with respect to disclosure and reporting of the dealings and payments, I will not find that Mr. Mulroney has acted in a manner that is inappropriate unless evidence of a like nature is before me.

[63] I believe that this standard is one that reflects the importance to Canadian democracy of the office of prime minister, as well as the public trust reposed in the integrity, objectivity, and impartiality of public office holders. It is a standard familiar to Mr. Mulroney, one accepted by him in the 1985 Ethics Code and in the 1988 *Guidance for Ministers*. It is a standard that reflects the need, as noted by Mr. Mulroney in his September 9, 1985, letter, to reinforce the trust and confidence of the public in both the government and the public service. As he noted in his letter, in order to reinforce that trust and confidence, the government must be guided by the highest standards of conduct. *Guidance for Ministers* states that there is an obligation on ministers not simply to observe the law but to act in both official and personal capacities in a manner so scrupulous that it will bear the closest public scrutiny. One of the purposes of an Inquiry is to bring that public scrutiny to bear. If the Prime Minister intended to hold ministers personally accountable to that level, then it follows that he himself would be accountable on the same basis.

After I issued my Standards Ruling, Mr. Mulroney filed an application for a clarification of certain aspects of it. On behalf of Mr. Mulroney, Mr. Pratte asserted that the application of the standard should be confined to the period during which Mr. Mulroney served as prime minister of Canada and the period defined by the 1985 Ethics Code. Mr. Pratte also sought clarification on whether I intended to make findings as to the appropriateness of conduct by referring to the Standing Orders of the House of Commons, Nos. 21 and 23(2), and to statutes such as the *Parliament of Canada Act*, the *Financial Administration Act*, the *Income Tax Act*, the *Excise Tax Act*, and the *Criminal Code* as they existed at the time of the events being investigated. He asked that I clarify what I intended to derive from these statutes.

After I heard submissions from counsel on Mr. Mulroney's application, I published a ruling clarifying my Standards Ruling. A copy of the Clarification Ruling is appended at the conclusion of this chapter (Appendix 9-2). Regarding Mr. Mulroney's request for clarification about the period to which the standard I articulated in my Standards Ruling applies, I stated the following:

... I have no interest in delving into the private life or private business affairs of Mr. Mulroney. My interest is restricted to those issues set forth in the Terms of Reference as established by the Governor in Council. As regards the timeframe, if there is evidence of conduct on the part of Mr. Mulroney that occurred after he left the high office of prime minister but that relates to the matters before me under the Terms of Reference, I will apply the standard set in the Standards Ruling for assessing that conduct.

THE ROLE OF LEGISLATION IN THIS ANALYSIS

As noted above, during the standards hearing, I was referred to the following legislation as containing ethical rules and guidelines that could potentially be relevant, depending on my findings in the Factual Inquiry: the *Parliament of Canada Act*; the *Financial Administration Act*; the *Criminal Code*; the *Excise Tax Act*; and the *Income Tax Act*. I was also referred to the Standing Orders of the House of Commons, Nos. 21 and 23(2).

In his submissions at the clarification hearing, Mr. Pratte asserted that these statutes and instruments should play no role in my assessment of appropriateness.

In my Clarification Ruling, I said that I may look to statutes for the purpose of finding relevant information, and for the purpose of avoiding the use of language found in the statute that "may lead members of the public to perceive that specific findings of criminal or civil liability have been made."

I also stated:

[19] At paragraph 65 of the Standards Ruling, I used the expression "I may be informed by" in relation to how I might utilize certain statutes. At no time did I intend to inform myself through these statutes as to specific deficiencies in conduct that may lead one to infer that I am commenting on criminal or civil liability. My use of the term "inform" as to these statutes was in reference to their assisting me in identifying a level of appropriate conduct. One can only determine if there are deficiencies in conduct after one has determined the standard by which the conduct under scrutiny can be judged on any given set of facts.

I also noted (at paragraph 21 of the Clarification Ruling):

While I referred to the *Criminal Code* in a direct quote from section 5(3) of the 1985 Ethics Code in paragraph 64 of the Standards Ruling and while I mentioned the *Criminal Code* again in paragraph 65 of the same ruling, I must state, upon reflection, that the *Criminal Code* is of little, if any, value in this endeavour. As a statute that

proscribes, as opposed to prescribes, conduct, it appears to be of trifling value in assisting me in setting the standard for conduct in this Inquiry.

The Standards Ruling and the Clarification Ruling were made before I heard evidence. Having now heard the evidence, with one exception I have determined that there is no need for me to look at the statutes to which I was referred in order to “inform myself” in making my finding on appropriateness. The one exception concerns the *Income Tax Act*. The Commission heard from representatives of the Canada Revenue Agency,⁸ who explained the parameters of the voluntary disclosure program as it existed in the year 2000 and the retainer provisions of the Act. This relevant information assisted me in understanding these tax matters.

My Findings in Earlier Chapters

In Chapter 6, I canvassed the evidence in an attempt to determine what the agreement was between Mr. Mulroney and Mr. Schreiber. Based on my review of the evidence, as set out in Chapter 6, I concluded that Mr. Schreiber retained Mr. Mulroney to promote the sale in the international market of military vehicles produced by Thyssen. I concluded that the secretive manner in which Mr. Mulroney and Mr. Schreiber carried out their transaction was designed to conceal their business and financial dealings.

I then canvassed the evidence to attempt to determine what services Mr. Mulroney had rendered to Mr. Schreiber in return for the payments to him. In support of his version of the mandate, Mr. Mulroney claimed that he spoke to various world leaders about the UN concept he had envisaged. With the exception of the Chinese leaders and Mr. Baker, all the individuals with whom he says he met are now deceased. The Chinese leaders are inaccessible, and he did not raise the subject of procurement with Mr. Baker. I preferred the evidence of Fred Bild, Canada’s ambassador to China at the time Mr. Mulroney said he spoke to Chinese leaders about his concept for the United Nations. Mr. Bild’s evidence cast grave doubt on Mr. Mulroney’s claim to have spoken to the Chinese leaders. In the end, I did not accept that he had done so.

I could find no evidence of any services Mr. Mulroney had rendered pursuant to the international mandate. There was also no evidence that he had ever lobbied domestically in support of Mr. Schreiber’s version of the mandate. I was unable to conclude that Mr. Mulroney rendered any services in furtherance of the international mandate.

On the issue of the amount of cash, here too there was no clarity: Mr. Mulroney claimed to have been paid \$75,000 on each of three occasions, for a total of \$225,000. Mr. Schreiber claimed that he paid Mr. Mulroney \$100,000 on each occasion, for a total of \$300,000.

Mr. Mulroney testified that he was surprised when Mr. Schreiber, on August 27, 1993, paid him in \$1,000 bills. Nonetheless, despite this surprise, he

accepted payment in cash on that occasion – and on two subsequent occasions. Mr. Mulroney had no satisfactory explanation for why he accepted payment in cash without documenting it. Mr. Schreiber did not request a receipt, and Mr. Mulroney did not give one. Mr. Mulroney had no satisfactory explanation for why, having accepted payment in cash, he failed to deposit the cash into a bank account or accounts, which would have created a documentary record. Instead, he left the first two payments in his home safe, and the third in a safety deposit box in the United States.

I placed no weight on the “mandate document” that Fred Doucet, Mr. Mulroney’s long-term friend, prepared in early 2000. That document stated that the amount paid was \$250,000. Mr. Doucet testified that he told Mr. Mulroney what was in the mandate document before he presented it to Mr. Schreiber. Mr. Mulroney said nothing to Mr. Doucet about the \$250,000 being incorrect. I noted that the mandate document was prepared only after Mr. Schreiber had been arrested on an extradition warrant and there were concerns that he was talking to the media about his relationship with Mr. Mulroney.

Mr. Doucet’s evidence was problematic in that he had absolutely no recall of significant events, yet was able to remember specific details of events that would assist Mr. Mulroney. Consequently, except where expressly noted in my Report, I was not prepared to place any weight on Mr. Doucet’s evidence unless it was supported by independent credible evidence.

Because there was not one scrap of contemporaneous paper to document the transaction, I was unable to reach a conclusion about the amount of money that had been paid to Mr. Mulroney, other than that at least \$225,000 had been paid.

I addressed the issues of disclosure and reporting in Chapter 8. I discussed in detail the examination before plea in 1996, where Mr. Mulroney was questioned under oath in public in relation to the matters raised in the letter of request issued by the Canadian government in the autumn of 1995. I concluded that Mr. Mulroney’s testimony was misleading. When asked whether he had maintained contact with Mr. Schreiber after he left office, Mr. Mulroney replied that they had had coffee on a few occasions. He justified the omission of any description of his business and financial dealings with Mr. Schreiber by saying that he “would have” answered a direct question on his dealings with Mr. Schreiber. However, on the examination, even though he was not asked a direct question about the meetings over cups of coffee he had with Mr. Schreiber, he described those occasions in detail without ever mentioning the cash that changed hands. Although he was never asked a direct question about it, he described how Marc Lalonde had done some work for Mr. Schreiber. He had not been asked about Mr. Lalonde, and yet he volunteered this information. He had been asked about Mr. Schreiber (indeed the letter of request made serious allegations about him in relation to Airbus and Bear Head and Mr. Schreiber’s involvement), but remarkably made no mention of his business and financial dealings with Mr. Schreiber. In the

same examination, Mr. Mulroney testified that he had never had any dealings with Mr. Schreiber. I concluded that Mr. Mulroney failed to disclose appropriately the facts of which he was well aware, when such disclosure was clearly called for.

With respect to disclosure of the payments, Mr. Mulroney had no satisfactory explanation for why he failed to disclose the payments he received from Mr. Schreiber until 1999. The payments were never entered into the accounts of his company, Consult – a company set up for the express purpose of Mr. Mulroney’s consulting business outside his law practice at Ogilvy Renault. Mr. Mulroney testified before me that he did not provide any services to Mr. Schreiber after 1995, when the letter of request came to light. He also testified that he ended the retainer in 1999. It was not clear whether he had continued to render some services to Mr. Schreiber (the two met in 1998, and Mr. Mulroney says they discussed Mr. Schreiber’s pasta business). If no further services were rendered after 1995, there was no satisfactory explanation why Mr. Mulroney waited to declare the payments until 1999, some five years later, and then under CCRA’s voluntary disclosure program for late filers. The consequence of filing under this program was that, under a CCRA policy at the time, Mr. Mulroney paid tax on only half of the \$225,000 he declared. If Mr. Mulroney did not end the retainer until 1999, I asked myself why there was any need to rely on the voluntary disclosure program for late filers. The payments could have been declared as income in Mr. Mulroney’s 1999 tax return.

Mr. Mulroney claimed that he incurred expenses in carrying out his mandate for Mr. Schreiber. However, according to Mr. Mulroney, all records of those expenses were destroyed. He said that was done in the ordinary course of events. As a result, Mr. Mulroney did not claim any expenses when he filed under the voluntary disclosure program. Nor did he have any documentation to present to me during the Factual Inquiry to substantiate any expenses.

Against this background of my findings, I now consider the appropriateness, or otherwise, of the business and financial dealings between Mr. Mulroney and Mr. Schreiber, and whether there was appropriate reporting and disclosure of the dealings and the payments. I will then discuss the ethical rules and guidelines in place at the time the business and financial dealings took place and whether they were followed.

Appropriateness

THE BUSINESS DEALINGS

Were Mr. Mulroney’s business dealings with Mr. Schreiber appropriate, considering Mr. Mulroney’s position as a current or former prime minister and member of parliament?

My examination of the business dealings between the two men necessarily commenced with a meeting that occurred on June 23, 1993, at Harrington Lake.

one day before Mr. Mulroney left the office of prime minister. At the conclusion of Chapter 6, I analyzed the evidence with respect to that meeting and found that Mr. Schreiber and Mr. Mulroney discussed a number of subjects, including, to a limited extent, the Bear Head Project. Despite the fact that Mr. Schreiber alleged that a business agreement with Mr. Mulroney was concluded that day, I found otherwise.

Mr. Schreiber's evidence to support the allegation he made about entering into a business agreement with Mr. Mulroney on June 23, 1993, at Harrington Lake was not supported by any independent evidence. Depending on what day it was, and to whom he was speaking, Mr. Schreiber gave different versions about the time he entered into an agreement with Mr. Mulroney.

Mr. Mulroney testified before me that nothing was established between him and Mr. Schreiber at Harrington Lake and that he made no agreement with Mr. Schreiber that day. I accept as true what Mr. Mulroney said about this meeting. After reviewing and analyzing the evidence, I found at the conclusion of Chapter 6 that no agreement was reached between Mr. Schreiber and Mr. Mulroney at Harrington Lake on June 23, 1993, while Mr. Mulroney was still the sitting prime minister of Canada. At most, Mr. Mulroney agreed that Mr. Schreiber could contact him if he wished to do so in the future through Mr. Doucet in Montreal.

Having so found and having applied, on an objective basis, the standard of behaviour referred to earlier in this chapter, I have no difficulty concluding that nothing occurred during the course of the meeting with Mr. Schreiber on June 23, 1993, that could be described as inappropriate.

In Chapter 6, I found that Mr. Mulroney entered into an agreement with Mr. Schreiber while Mr. Mulroney was still sitting as a member of parliament. I found that the agreement was made on August 27, 1993, at the hotel at the Mirabel Airport near Montreal and that, pursuant to that agreement, Mr. Schreiber retained the services of Mr. Mulroney to promote in the international market the sale of military vehicles produced by Thyssen.

I now turn to a consideration of whether, objectively speaking, Mr. Mulroney's entering into the agreement with Mr. Schreiber was, in all the circumstances, appropriate.

The circumstances I consider to be relevant in determining whether Mr. Mulroney's entering into the transaction with Mr. Schreiber was appropriate include the following:

- 1 While occupying the office of prime minister of Canada, Mr. Mulroney had met with Mr. Schreiber on an official basis on numerous occasions, and all the meetings dealt with the Bear Head Project.
- 2 To Mr. Mulroney's knowledge, all the meetings he had with Mr. Schreiber were arranged at Mr. Schreiber's request by either Elmer MacKay or Mr. Doucet, both of whom were closely associated with Mr. Mulroney.

- 3 Mr. Mulroney was fully aware of Mr. Schreiber's objective in meeting with him – namely, to enlist his support as prime minister in advancing the cause of the Bear Head Project, whether in Nova Scotia or elsewhere.
- 4 Mr. Mulroney was aware that, almost without exception, senior bureaucrats and senior military personnel were opposed to the proposal being advanced by Mr. Schreiber.
- 5 That having dealt with Mr. Schreiber on an official basis over several years, Mr. Mulroney entered into a business transaction with him within nine weeks of departing the office of prime minister and while still sitting as a member of parliament.
- 6 Mr. Mulroney took no steps to memorialize the agreement with Mr. Schreiber. A sophisticated businessman, Mr. Mulroney failed to follow standard business practice in terms of the agreement he made with Mr. Schreiber. Rather, Mr. Mulroney took every step possible at the time he entered into the agreement with Mr. Schreiber and thereafter to conceal the fact of the transaction.

I now pose the question, “Would a reasonable, fair-minded observer, being informed of all the circumstances surrounding Mr. Mulroney's business dealings with Mr. Schreiber, say that those dealings conformed to the highest standards of conduct and were so scrupulous that they can bear the closest possible scrutiny?”

In my view, the answer to this question is obvious. The business dealings as between Mr. Mulroney and Mr. Schreiber were not appropriate. It is patently obvious to me that the business dealings neither conformed to the highest standards of conduct nor were scrupulous enough to bear the closest possible scrutiny.

Mr. Mulroney had just completed serving almost nine years as prime minister of Canada. During his tenure in that office, he had a significant number of dealings, on an official basis, with Mr. Schreiber. All those dealings related to work Mr. Schreiber was doing on behalf of Thyssen, its Bear Head Project, or both.

While Mr. Mulroney seemed to be proud of the fact that he had “killed” the Bear Head Project in 1991, the project was not dead. As I have indicated in previous chapters, it kept rising, like Phoenix from the ashes, in another form. It was possible for that to occur because Mr. Mulroney continued to meet with Mr. Schreiber, even after Mr. Mulroney said he had killed the project.

While there is no evidence to suggest that Mr. Mulroney applied improper pressure on anyone regarding the Bear Head Project while he was prime minister. I find that the degree of access he granted to Mr. Schreiber was not appropriate – for the following reasons. Although Mr. Schreiber was not registered as a lobbyist on behalf of either Thyssen or the Bear Head Project, he was in fact lobbying Mr. Mulroney on behalf of both entities. What is of more concern is the fact that, at the same time, Mr. Mulroney's close friend and confidant, Mr. Doucet, who was responsible for arranging many of the meetings between Mr. Mulroney and Mr. Schreiber as well as attending at least some of those meetings, was registered as a lobbyist for Bear Head Industries. The evidence discloses that, when

Mr. Doucet left his position with the government, he received a waiver entitling him to commence work as a lobbyist within a very short period following his resignation.

When Mr. Mulroney left the office of prime minister, he went back into the practice of law at a respected law firm in Montreal, Ogilvy Renault. Because of his status on the international stage, he decided to do consulting work, including work in the international arena. Mr. Mulroney had an agreement with Ogilvy Renault that the income he derived from his consulting work would be his and his alone, with no need to share it with his partners in the law firm. Mr. Mulroney took steps to incorporate a company, Cansult, as the vehicle to be used to conduct his consulting business. The evidence before me is clear that Mr. Mulroney did not use Cansult for his business dealings with Mr. Schreiber, despite the fact that conducting his consulting business was the very reason for incorporating Cansult.

The evidence is also clear that the business dealings Mr. Mulroney had with Mr. Schreiber were not documented by or on behalf of Mr. Mulroney, a sophisticated businessman, until the year 2000, when Mr. Doucet prepared what has been referred to as the mandate document.

I note that Mr. Doucet prepared the mandate document only after Mr. Schreiber had been arrested on an extradition warrant and there were concerns that he was talking to the media about his relationship with Mr. Mulroney. The evidence before me is that Mr. Doucet was in contact with Mr. Mulroney, who agreed that preparing such a document was desirable. If such a document were advisable then, years after the contract was made, arguably it was just as desirable to have the contract reduced to writing when it was made.

It is of interest to me that the mandate document was not in keeping with Mr. Mulroney's evidence as to the nature of his dealings with Mr. Schreiber. For example, Mr. Mulroney testified that the payments he received from Mr. Schreiber pursuant to the agreement totalled \$225,000, while the mandate document shows a payment of \$250,000. Mr. Mulroney testified that he ended the retainer in 1999, but the mandate document indicates that the retainer was for a period of time in the early to mid-1990s.

As I have already stated, the business dealings that Mr. Mulroney had with Mr. Schreiber were not appropriate, given the circumstances in which they occurred. In my opinion, if the dealings were appropriate, a contract, an exchange of letters, or some other documentation would have been made confirming the agreement between Mr. Mulroney and Mr. Schreiber on August 27, 1993. In addition, if the dealings were appropriate, Mr. Mulroney would have used his corporation, Cansult, as a party to the agreement. The fact of the dealings Mr. Mulroney had with Mr. Schreiber would have been recorded in the company's books.

I recognize that the dealings Mr. Mulroney had with Mr. Schreiber were private and that Mr. Mulroney tried to ensure that they continued in that vein. But, I ask myself, why did Mr. Mulroney not want the fact of those dealings to be publicized? I believe the

answer is that he had been out of office as prime minister for only nine weeks and that he was now dealing on a private basis with the man he had been dealing with officially for a period of five years while he occupied the office of prime minister.

In my view, legitimate questions as to the propriety of what Mr. Mulroney was doing would have arisen in the mind of any reasonable, informed, objective observer. Even Mr. Mulroney conceded that point while testifying before me.

I feel constrained to say that, if Mr. Mulroney had made a written agreement with Mr. Schreiber, or if he had used Cansult as the vehicle through which his dealings with Mr. Schreiber were conducted, neither one of these standard business practices would have brought the fact of those dealings into the public arena. They would have remained private. Why, then, was there a need for such secrecy? And why did Mr. Mulroney not use Cansult to conduct his business dealings with Mr. Schreiber? The answer, in my opinion, is that Mr. Mulroney wanted to conceal the fact that he had received money from Mr. Schreiber.

I find, applying Mr. Mulroney's own test, that his business dealings with Mr. Schreiber were not appropriate. As I said earlier in this chapter, those dealings did not conform to the highest standards of conduct, nor were they so scrupulous that they can bear the closest possible scrutiny.

THE FINANCIAL DEALINGS

The evidence before me discloses that the financial dealings between Mr. Mulroney and Mr. Schreiber consisted of three separate occasions on which Mr. Schreiber made large cash payments to Mr. Mulroney. On each of the three occasions, the cash consisted of Can\$1,000 bills and was concealed in an envelope.

The first cash transaction between the two men occurred on August 27, 1993, in a room at a hotel at Mirabel Airport near Montreal. Mr. Schreiber and Mr. Mulroney were alone in that room. Although Mr. Mulroney made a point of telling me while testifying that he was driven to and from the hotel at Mirabel Airport by two members of the RCMP, who were stationed outside the door of the room when the cash transaction took place, that did nothing so far as I am concerned to legitimize what was occurring in that room. Needless to say, neither member of the RCMP would be aware of what was transpiring behind the closed door. And when Mr. Mulroney left the room carrying the envelope, neither officer was aware that the envelope contained a considerable amount of cash.

The second occasion on which Mr. Schreiber gave Mr. Mulroney a large number of Can\$1,000 bills, again in an envelope, was on Saturday, December 18, 1993, in a room where coffee is served at the Queen Elizabeth Hotel in Montreal.

With respect to this particular occasion, Mr. Mulroney testified that other people were also in the room, some of whom came over to the table where he and Mr. Schreiber were seated in order to speak to him and, in some cases, to ask for

autographs. If that evidence was an attempt by Mr. Mulroney to somehow legitimize what was transpiring, the attempt failed. Again, I must note that no one in the room besides Mr. Schreiber and Mr. Mulroney could possibly have known what was transpiring when Mr. Schreiber handed the cash-stuffed envelope to Mr. Mulroney.

On December 8, 1994, the third cash transaction took place in a suite at the Pierre Hotel in New York City. On this occasion, Mr. Doucet was present. He testified that he had no idea what was in the envelope that changed hands that morning or early afternoon, and that Mr. Mulroney never told him after the event what had occurred insofar as the exchange of cash is concerned.

The question I must now address is whether, in all the circumstances, the financial dealings between Mr. Schreiber and Mr. Mulroney were appropriate or not.

The manner in which Mr. Mulroney dealt with the cash subsequent to receiving it is as significant as the fact that he accepted cash from Mr. Schreiber on three separate occasions. The evidence is that, for a period of time, the first payment received by Mr. Mulroney was stored in a portable safe at the cottage he and his family were renting at Estérel, Quebec. When they moved into their home in Montreal, Mr. Mulroney transferred the cash paid to him by Mr. Schreiber at the hotel at Mirabel to a safe in their house. Mr. Mulroney also put the cash paid to him by Mr. Schreiber on December 18, 1993, into the safe at the Mulroney residence in Montreal. He placed the cash he received from Mr. Schreiber in New York City on December 8, 1994, in a safety deposit box that he (Mr. Mulroney) opened in a bank in that city. No record of that deposit was made.

Mr. Mulroney emphasized while testifying that he has never knowingly done anything wrong in his life. He also made a point of telling me during the course of his testimony that there was nothing illegal about his accepting three separate payments of cash in Can\$1,000 bills from Mr. Schreiber. I assume that, when Mr. Mulroney says he has never knowingly done anything wrong in his life, he means he has never knowingly done anything illegal in his life.

While I agree with Mr. Mulroney that cash transactions in Canadian currency are legal, I must say that the fact that a cash transaction is legal does not necessarily mean that it is appropriate. To determine whether the cash transactions here were appropriate, I have considered the circumstances and the context in which they were made.

It is important to remember that, when Mr. Mulroney received the cash payments on three separate occasions from Mr. Schreiber, he did absolutely nothing to record the fact of these payments to him. The payments were made in connection with the agreement that Mr. Schreiber and Mr. Mulroney made on August 27, 1993. Though seemingly a straightforward business transaction, once again it was not recorded or documented in any way whatsoever.

Surely standard business practice and business acumen dictate that the details of the contract should have been documented, as should the receipt of the

money on each of the three occasions. So far as business acumen is concerned, Mr. Mulroney had just left the highest elected office in Canada when he accepted the first cash payment and, before entering politics, he had been the president of a major Canadian corporation, the Iron Ore Company of Canada. Also, it is of note that Mr. Mulroney has a legal background.

Surely a man with the education, business, and government background of Mr. Mulroney could reasonably be expected to follow standard business practice by documenting a contract, by recording the receipt of cash monies paid, by depositing those monies into a bank or other financial institution and thereby creating a record, and by declaring a reserve under the *Income Tax Act* where cash is received by way of a retainer. In these circumstances, Mr. Mulroney's failure to follow standard business practice raises questions as to the appropriateness of the cash transactions.

When the first payment of cash was made, Mr. Mulroney said he was rather taken aback and he hesitated before he accepted the envelope. One can reasonably infer from that reaction that he knew very well that what was occurring was not appropriate or in compliance with standard business practice. Mr. Mulroney testified that, when he hesitated to take the envelope containing the cash, Mr. Schreiber told him he was an international businessman and dealt only in cash. The evidence is clear that, while Mr. Schreiber on more than one occasion did deal in cash, he also used cheques to pay for services rendered. Mr. Schreiber always paid Mr. Lalonde by cheque, made payable to his law firm Stikeman Elliott, and he paid Mr. Doucet by cheque.

With respect to the second cash payment he received, Mr. Mulroney said he did not expect the payment to be in cash. That, with respect, is inconsistent with his statement that Mr. Schreiber told him he always dealt in cash.

There was more than one option open to Mr. Mulroney. First, he could have insisted on receiving cheques rather than cash. Second, he could have issued receipts for the cash he received. Third, instead of squirrelling the cash away in a safe in his residence or a safety deposit box in New York (where no record of the deposit was kept), he could have deposited the cash into an account or accounts at a bank or other financial institution where he did business. Mr. Mulroney chose to do none of these things.

On the basis of the evidence I have considered, I find that the financial dealings between Mr. Schreiber and Mr. Mulroney were inappropriate.

I pause here to point out as well that, in years subsequent to his accepting the cash payments from Mr. Schreiber, Mr. Mulroney had several opportunities during which he could have disclosed the cash payments (see Chapter 8). He failed to do so on each of those occasions.

In all the circumstances, can it be said that the financial dealings between Mr. Schreiber and Mr. Mulroney reflect the highest standards of conduct? In my view,

no. Do those financial dealings represent conduct that is so scrupulous that it will bear the closest public scrutiny? In my view, again, no. Would the financial dealings cause embarrassment or be difficult to justify to the public should those dealings be reported in the media? In my view, yes.

The conduct exhibited by Mr. Mulroney in accepting cash-stuffed envelopes from Mr. Schreiber on three separate occasions, failing to record the fact of the cash payments, failing to deposit the cash into a bank or other financial institution, and failing to disclose the fact of the cash payments when given the opportunities to do so goes a long way, in my view, to supporting my position that the financial dealings between Mr. Schreiber and Mr. Mulroney were inappropriate.

DISCLOSURE AND REPORTING

In Chapter 8 of this Report, I fully explored the issue of whether Mr. Mulroney's disclosure and reporting of his dealings with and payments from Mr. Schreiber were appropriate. In arriving at my finding that Mr. Mulroney inappropriately failed to disclose and report on his business and financial dealings with Mr. Schreiber, I applied the objective test that Mr. Mulroney himself had established shortly after he became prime minister of Canada in 1984.

I asked myself whether, on an objective basis, Mr. Mulroney's conduct in failing to disclose and report on his business and financial dealings when he had the opportunity to do so could be seen as conduct so scrupulous that it would bear the closest public scrutiny. I went on to ask myself whether the failure to disclose and report on his business and financial dealings with Mr. Schreiber could cause embarrassment or be difficult to justify to the public should it be reported to the media.

As I pointed out in Chapter 8, on none of the occasions on which Mr. Mulroney was given the opportunity to disclose and report on his business and financial dealings with Mr. Schreiber did he choose to do so. On another occasion, when William Kaplan, a lawyer and legal historian, was going to write about these matters, Mr. Mulroney attempted to convince him by persuasion and then by intimidation not to do so.

Mr. Mulroney's conduct in failing to disclose and report on his business and financial dealings with Mr. Schreiber can hardly be said, in all the circumstances set forth in Chapter 8, to be conduct "so scrupulous that it will bear the closest public scrutiny." In my view, the failure to disclose and report on his business and financial dealings with Mr. Schreiber could cause embarrassment to him and to others and would have been difficult to justify to the public should that failure have been reported by the media.

FINDINGS

Question 11 of the Terms of Reference directed me to determine whether the business and financial dealings between Mr. Schreiber and Mr. Mulroney were appropriate considering the position of Mr. Mulroney as a current or former prime minister and member of parliament. In answer to this question, I find that Mr. Mulroney's conduct in his business dealings with Mr. Schreiber was not appropriate; and that Mr. Mulroney's conduct in his financial dealings with Mr. Schreiber was not appropriate.

With respect to Question 12, disclosure and reporting, I find that Mr. Mulroney failed to take any steps to document the dealings and payments when he entered into his agreement with Mr. Schreiber on August 27, 1993, or when he received the two subsequent payments on December 18, 1993, and December 8, 1994. What he could have done was simple. First, he could have arranged for the agreement with Mr. Schreiber to be in writing. Second, he could have issued receipts for the cash he received and entered the fact of the receipt of cash on the books of his company, Consult – a company incorporated for the very purpose of operating Mr. Mulroney's consulting business. Third, he could have deposited the cash he received from Mr. Schreiber into an account at a bank or other financial institution – an action that would, I suggest, have been in accord with business acumen and with standard business practice.

I find that Mr. Mulroney did not declare a reserve under the *Income Tax Act* regarding the cash he received on any of the seven occasions when he could have done so. I am not saying he was legally obligated to do so. However, I rely on his decision not to do so to support my finding that there was not appropriate disclosure and reporting of the payments.

I find that Mr. Mulroney acted inappropriately in failing to disclose his dealings with Mr. Schreiber and the payments he received when he gave evidence at his examination before plea in 1996.

I find that Mr. Mulroney failed to heed the advice of Luc Lavoie, his spokesperson, when Mr. Lavoie advised him to go public regarding his relationship with Mr. Schreiber. In doing so, Mr. Mulroney failed to take advantage of an opportunity to disclose appropriately his dealings with Mr. Schreiber and the payments he received.

I find that Mr. Mulroney acted inappropriately in misleading William Kaplan when he (Mr. Kaplan) was preparing to write *Presumed Guilty: Brian Mulroney, the Airbus Affair and the Government of Canada* (1998), a book in which he intended to defend Mr. Mulroney's reputation.

I also find that, when Mr. Kaplan was in the process of writing his series of articles for the *Globe and Mail* in November 2003, Mr. Mulroney acted inappropriately in the manner in which he attempted to persuade Mr. Kaplan not

to publish the articles. I find that the foregoing actions of Mr. Mulroney were clearly a calculated attempt on his part to prevent Mr. Kaplan from publicly disclosing Mr. Mulroney's dealings with Mr. Schreiber and the cash payments he had received from him.

In summary, I find that Mr. Mulroney's conduct in failing to disclose and report on his dealings with and payments from Mr. Schreiber was not appropriate.

CONCLUDING REMARKS ON APPROPRIATENESS

In his first report,⁹ David Johnston noted:

[T]he concerns of many Canadians arose from the fact that a former prime minister took large cash payments from someone now implicated in questionable transactions, and whose extradition for various charges has been sought and obtained by the Government of Germany. The suspicions raised by these cash payments were compounded by Mr. Mulroney's silence on the matter ... As the stories about the cash payments became more and more widely reported, and as they remained unanswered by Mr. Mulroney himself, suspicions among Canadians intensified.

Subsequent to the publication of Dr. Johnston's initial report, the matter came before the House of Commons Committee on Access to Information, Privacy and Ethics (Ethics Committee).

As Dr. Johnston reported, in his testimony before the Ethics Committee, Mr. Mulroney said that "the circumstances that led to this 'impression of impropriety' amounted to a serious error in judgment on his part. Mr. Mulroney also acknowledged that it had been an 'unwise decision' to remain silent on these matters."

Before this Commission, Mr. Mulroney commenced his testimony by expressing his regret that the "circumstances" surrounding "these transactions" gave rise to "suspicions as to their propriety." He also said he accepted that "inadequately documented arrangements are inappropriate" and "should be avoided at all times."¹⁰ I note that Mr. Mulroney offered no apology for taking the three payments totalling at least \$225,000 in Can\$1,000 bills from Mr. Schreiber. He did not apologize for failing to document any of his dealings with Mr. Schreiber in the years after he received the payments. And he did not apologize for telling only the partial truth at his examination before plea in 1996 about his relationship with Mr. Schreiber after leaving public office.

This Commission provided the opportunity for Mr. Mulroney to clear the air and put forward cogent, credible evidence to support his assertions that there was nothing untoward about his dealings with Mr. Schreiber. I regret that he has

not done so. I express this regret on behalf of all Canadians, who are entitled to expect their politicians to conserve and enhance public confidence and trust in the integrity, objectivity, and impartiality of government. Mr. Mulroney's actions failed to enhance public confidence in the integrity of public office holders.

Question 13 of my Terms of Reference directs me to consider whether ethical rules or guidelines were in place at the time which related to the business and financial dealings between Mr. Mulroney and Mr. Schreiber, and, if so, to determine whether they were followed. I carry out that analysis in the following section of this chapter. I conclude this section by noting that Mr. Mulroney's conduct in his business and financial dealings with Mr. Schreiber and his failure to report and disclose those dealings were inappropriate, independent of any ethical rules and guidelines in place at the time.

Ethical Rules and Guidelines

Ethics rules and guidelines pertaining to politicians at the federal level have evolved since the mid-1980s. By the end of Mr. Mulroney's tenure in office (as prime minister until June 24, 1993, and as a member of parliament until September 8, 1993), the ethical rules of possible relevance to the Commission's work were contained in the *Parliament of Canada Act*, House of Commons Standing Orders Nos. 21 and 23(2), the Conflict of Interest and Post-Employment Code for Public Office Holders (referred to here as the 1985 Ethics Code), and the *Guidance for Ministers*.

GUIDANCE FOR MINISTERS

According to the Preface to *Guidance for Ministers*, the document contained "information and advice for Ministers on their duties and responsibilities as Ministers of the Crown." The Preface also noted that the prime minister had "asked that every Minister should receive and be guided by this advice." The 1988 version of the document (it was also issued in 1984) is relevant to the Commission's mandate. It contains a section dealing with the standard of conduct expected of ministers.

The *Guidance for Ministers* document does not itself contain any specific ethical rules. Ministers are referred to the 1985 Ethics Code and directed as follows:

You should ensure you are personally familiar, and that you are and remain in compliance, with the requirements of the [1985 Ethics Code]. These requirements are not repeated here, nor summarized, because Ministers will be held accountable by the Prime Minister, and will be judged by the media and the public, according to the Code's precise provisions to which you should refer.

The 1984 version of *Guidance for Ministers* stated that the “elementary qualification demanded of a minister is honesty and incorruptibility.” The 1988 guide states that ministers have an obligation “not simply to observe the law, but to act ... in a manner so scrupulous that it will bear the closest public scrutiny.”¹¹ As noted earlier, I adopted this standard as the one by which I will measure the appropriateness of Mr. Mulroney’s conduct and disclosure and reporting.

THE *PARLIAMENT OF CANADA ACT* AND STANDING ORDERS

The *Parliament of Canada Act* and the Standing Orders of the House of Commons, Nos. 21 and 23(2), were brought to my attention during the hearings on standards as of potential application, depending on my findings about the business and financial dealings between Mr. Mulroney and Mr. Schreiber. The *Parliament of Canada Act* and the standing orders deal with the conduct of members of parliament. Given my findings on the nature of the business and financial dealings, which are described in Chapter 6, I have concluded that neither the *Parliament of Canada Act* nor these Standing Orders apply in the context of the facts before me.

THE 1985 ETHICS CODE

The 1985 Ethics Code was a policy only, not a law enacted through statutory instrument. It was restricted to public office holders, which included ministers of the Crown (including the prime minister) and senior members of the executive branch. Members of parliament were not covered by the 1985 Ethics Code, and no equivalent instrument applied to them.

The 1985 Ethics Code restricted the business dealings of public office holders while in office and during the post-employment period. The object of the Code was “to enhance public confidence in the integrity of public office holders and the public service ... (c) by establishing clear rules of conduct respecting conflict of interest for, and post-employment practices applicable to, all public office holders.” To this end, the Code included both permanent and time-limited rules, reproduced in Table 9-1.

TABLE 9-1: 1985 ETHICS CODE – PRINCIPLES AND RULES

	WHILE IN PUBLIC OFFICE	ON LEAVING PUBLIC OFFICE
Interpretation	A “public office holder” includes a minister of the Crown. Members of parliament are not covered by the 1985 Ethics Code.	
General “Principles”	<p>Section 7</p> <p>(a) public office holders shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity, and impartiality of government are conserved and enhanced;</p> <p>(b) public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;</p> <p>(c) public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate;</p> <p>(d) on appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential, or apparent conflicts of interest from arising, but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest;</p> <p>(e) public office holders shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public office holder;</p> <p>(f) public office holders shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person;</p> <p>(g) public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public;</p> <p>(h) public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.</p>	<p>Section 7(i) – “public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.” There is no time restriction on this prohibition.</p>

TABLE 9-1: 1985 ETHICS CODE – PRINCIPLES AND RULES (CONTINUED)

	WHILE IN PUBLIC OFFICE	ON LEAVING PUBLIC OFFICE
“Compliance Measures” on Business Dealings	<p>Section 28 – Subject to the limitations in sections 29–32, public office holder participation in activities outside their official duties is “acceptable where it is not inconsistent with their official duties and responsibilities and does not call into question their capacity to perform their official duties and responsibilities objectively.”</p> <p>Section 29 – Subject to exceptions that do not appear relevant to this Inquiry, “public office holders shall not, outside their official duties, (a) engage in the practice of a profession; (b) actively manage or operate a business or commercial activity; (c) retain or accept directorships or offices in a financial or commercial corporation; (d) hold office in a union or professional association; or (e) serve as a paid consultant.”</p> <p>Section 33 – Subject to exceptions that do not appear relevant to this Inquiry, “gifts, hospitality or other benefits that could influence ... public office holders in their judgment and performance of official duties and responsibilities shall be declined.”</p> <p>Section 36 – public office holders “shall not accord preferential treatment in relation to any official matter to family members or friends or to organizations in which they, family members or friends have an interest” and “shall take care to avoid being placed or the appearance of being placed under an obligation to any person or organization that might profit from special consideration on the part of the office holder.”</p> <p>Section 58 – “Public office holders should not allow themselves to be influenced in the pursuit of their official duties and responsibilities by plans for or offers of outside employment.”</p>	<p>Section 57 – “Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office.” There is no time restriction on this prohibition.</p> <p>Section 59 – “At no time shall a former public office holder act for or on behalf of any person, commercial entity, association, or union in connection with any specific ongoing proceeding, transaction, negotiation or case to which the Government is a party: (a) in respect of which the former public office holder acted for or advised a department; and (b) which would result in the conferring of a benefit not for general application or of a purely commercial or private nature.”</p> <p>Section 60 – For two years after leaving office, a former minister shall not:</p> <p>“(a) accept appointment to a board of directors of, or employment with, an entity with which they had significant official dealings during the period of one year immediately prior to the termination of their service in public office;</p> <p>(b) make representations for or on behalf of any other person or entity to any department with which they had significant official dealings during the period of one year immediately prior to the termination of their service in public office; or</p> <p>(c) give counsel, for the commercial purposes of the recipient of the counsel, concerning the programs or policies of the department with which they were employed, or with which they had a direct and substantial relationship during the period of one year immediately prior to the termination of their service in public office.”</p>

Discussion

While a Public Office Holder

Mr. Mulroney was prime minister until and including June 24, 1993, thereafter sitting as a member of parliament until September 8, 1993. Until June 24, 1993, therefore, the 1985 Ethics Code applied to his conduct in full. After that date, the post-employment provisions of the 1985 Ethics Code applied for a two-year period after June 24, 1993.

I first consider whether the June 23, 1993, meeting between Mr. Mulroney and Mr. Schreiber was consistent with the ethical rules and guidelines set out in the legislation and the Ethics Code. In Chapter 6, I concluded that Mr. Schreiber and Mr. Mulroney did not enter into an agreement on June 23, while Mr. Mulroney was still prime minister. Having considered the applicable rules and guidelines, I conclude that this meeting in and of itself did not contravene any of the ethical rules and guidelines.

Section 29 of the 1985 Ethics Code expressly bars certain public office holders, including ministers, while in office from, for example, engaging in the practice of a profession, actively managing or operating a business or commercial activity, or serving as a paid consultant. The section 29 prohibitions are directed at the pursuit of outside activities *concurrently* with the holding of public office. Section 29 is not contained in the part of the Ethics Code directed at former public office holders or public office holders anticipating departure from office. I found that Mr. Mulroney entered into a consulting arrangement with Mr. Schreiber after leaving the office of prime minister. He was no longer a public office holder, and therefore section 29 is not engaged by the facts before me.

Section 33 of the 1985 Ethics Code precludes receipt by certain public office holders, including ministers, of “benefits that could influence ... public office holders in their judgment and performance of official duties and responsibilities.” Because I have concluded that Mr. Mulroney did not enter into an agreement with Mr. Schreiber until August 27, 1993, section 33 is not engaged by the facts in this case. By August 27, 1993, when the first payment was received by Mr. Mulroney, he was no longer a minister and was no longer subject to the prohibition set out in section 33. There is no evidence that, while he was a public office holder (the prime minister), he received from Mr. Schreiber a benefit that could influence him in his judgment and performance of his official duties. I have therefore concluded that section 33 was not engaged by Mr. Mulroney’s behaviour.

The matters raised above concern specific rules found under the heading of “compliance measures” in the Ethics Code. A number of other, ethical principles are found in section 7.

Section 7 of the Ethics Code, entitled “Principles,” provides that

- (a) public office holders shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;
- (b) public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;
- (c) public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate;
- (d) on appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential, or apparent conflicts of interest from arising, but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest.

In the previous section of this chapter, I found that the degree of access granted by Mr. Mulroney to Mr. Schreiber was not appropriate. I referred to the fact that, although Mr. Schreiber was not a registered lobbyist on behalf of either Thyssen or the Bear Head Project, he nonetheless lobbied Mr. Mulroney on behalf of both entities. Mr. Mulroney permitted increased access by Mr. Schreiber because Mr. Doucet often requested it. Mr. Mulroney gave Mr. Doucet access because he was a former adviser and long-time friend. Section 7(b) applied to Mr. Mulroney while he held the office of prime minister. I note that section 7(b) of the 1985 Ethics Code contains the same standard applicable to public office holders while in office that I have held to be the standard to be applied to Mr. Mulroney’s conduct throughout his business and financial dealings with Mr. Schreiber. Section 7(b) provides, “[P]ublic office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.” For the same reason that I found this aspect of Mr. Mulroney’s conduct inappropriate, I find that he contravened section 7(b) of the 1985 Ethics Code.

The same concerns give rise to a concern under section 7(d) and section 36 of the 1985 Ethics Code. Section 7(d) requires public office holders to arrange their affairs so as to prevent “real, potential or apparent conflicts of interest.” Section 36 states that a public office holder shall not accord preferential treatment to friends or to organizations in which their friends have an interest, and shall take care not to be placed under “an obligation to any person or organization that might profit from special consideration on the part of the public office holder.” The evidence before me was that, whenever Mr. Schreiber came to Canada and wanted to meet with Mr. Mulroney, Mr. Doucet would arrange to make the meeting happen. Mr. Mulroney confirmed this evidence to be the case. In my view, it is possible that Mr. Mulroney contravened these sections of the 1985 Ethics Code through the creation of an apparent conflict of interest due to his friendship with Mr. Doucet.

The Supreme Court of Canada arguably equated an “apparent” conflict of interest with the administrative law standard of “reasonable apprehension of bias” in *Brossard (Town) v. Quebec*.¹² The Federal Court of Appeal has applied what amounts to the same standard: “Would an informed person, viewing the matter realistically and practically and having thought the matter through, think it more likely than not that the public servant, whether consciously or unconsciously, will be influenced in the performance of his official duties by considerations having to do with his private interests?”¹³

Particularly instructive is *Canada (Attorney General) v. Ash*,¹⁴ a 2006 decision of the Federal Court of Appeal interpreting the equivalent to section 33 in the Conflict of Interest and Post-Employment Code for the Public Service (Public Service Code). At issue was whether the acceptance of a testamentary gift by a federal public servant could influence the performance of public duties. In answering this question, the Court has this to say about the applicable test:

73. ... the relevant legal test is whether a reasonable person, who was informed of the facts of a given case, and had thought the matter through in a practical manner, would think that a pensions advocate's acceptance of a legacy could influence the advocate to give preferential treatment to clients whom she or he believed might leave a legacy as a reward for professional services rendered.
74. The application of the “perception of conflict” test to particular facts is a question of mixed fact and law. It involves a factual assessment, which can only be made on the basis of practical judgments and inferences, rather than direct evidence. The application of a legal test also includes a normative element involving striking an appropriate balance. In the present case, the factors to be balanced are, on the one hand, permitting a pensions advocate like other legatees, to benefit from a client's desire to make a gift, and, on the other, enhancing public confidence in the integrity and even-handedness of the public service by removing inducements from civil servants to take into account, whether deliberately or subconsciously, their own interests when performing official duties.
75. Fanciful speculation about the influence that acceptance of the legacy could theoretically have on employees' conduct is not sufficient to engage section 27 [the provision in the Public Service Code that is equivalent to section 3.3 of the 1985 Ethics Code]. However, since the section speaks of the influence that a gift *could*, not *would* have, a balance of probability is too high a standard. In this respect, the test is different from that for a reasonable apprehension of bias, where the question is whether a reasonable person would think it more likely than not that, consciously or unconsciously, the decision-maker *would* be biased ...
76. In my opinion, the relevant question to ask under section 27 in this case is whether a reasonable person would think that there was a realistic possibility that acceptance of the legacy could influence the employee's future performance of official duties ...

80. ... the application of section 27 must take account of the Code's object of enhancing the public's confidence in the integrity of the public service (section 4) and should be relatively risk-averse in this respect. In my opinion, non-trivial personal rewards for services rendered simply have no place in the professional relationship between public servants and those they serve. To conclude that a reasonable person would think that there was a realistic possibility that a pensions advocate's acceptance of a \$5,000 legacy *could* influence the performance of her or his duties to other clients is also consistent with the broad principle in paragraph 6(e) of the Code.

The approach taken by the Federal Court of Appeal is that the preferential treatment provision should be interpreted in light of the other principles that are found in the Public Service Code and which require the utmost probity. This latter language is found also in the 1985 Ethics Code in almost identical form.¹⁵

I therefore ask whether an informed person, viewing the matter realistically and practically and having thought the matter through, would think it more likely than not that Mr. Mulroney, by agreeing to meet with Mr. Schreiber, accorded special treatment to a friend – Mr. Doucet – in relation to the Bear Head Project, an official matter that was under consideration by various government departments from 1988 through 1994. Mr. Doucet, who lobbied on behalf of Mr. Schreiber, would have benefited from that access. I believe that an appearance of conflict of interest was created, and that Mr. Mulroney as prime minister acted contrary to his obligations under section 7(d) and section 36.

Dealings After Leaving the Office of Prime Minister

From the period June 25, 1993, forward, Mr. Mulroney was no longer a public office holder as defined in the 1985 Ethics Code. However, post-employment restrictions under the 1985 Ethics Code continued to apply to him, in some cases for two years and in other instances indefinitely. At issue for the Commission, therefore, is whether Mr. Mulroney's alleged post-public office conduct was consistent with these post-employment requirements.

Courts interpreting the 1985 Ethics Code (and its public service equivalent) have established demanding standards for those governed by these instruments. As the Supreme Court observed in *R. v. Hinchey*, "[G]iven the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe."¹⁶

The decision of the Federal Court of Appeal in *Assh* suggests that a similar expansive approach has been applied to federal conflicts of interest codes. The post-employment provisions of the Ethics Code¹⁷ were interpreted by the Federal Court Trial Division (as it then was) in *LGS Group Inc. v. Canada (Attorney General)*.¹⁸ At issue in that case was whether a contractual provision (section 28) between a contractor and the

Government of Canada precluding a “former public office holder of the Government of Canada, who is not in compliance with the provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders, [from deriving] any direct benefit from this Contract,” extended to the process of soliciting the contract ultimately entered into. In concluding that it did, the Federal Court held:

It is entirely inconsistent with the object of enhancing public confidence in the integrity of public office holders and the principle of ensuring that former public office holders do not take improper advantage of their previous office, to read section 28 so as to exempt from scrutiny actions of former public office holders and contractors who mutually benefit from “insider” or “confidential” knowledge merely because the benefit occurs in the process of obtaining a contract and not in fulfilling the contract.¹⁹

These authorities dictate that the provisions of the 1985 Ethics Code be read broadly and generously to impose expansive obligations on public office holders. The Ethics Code’s post-employment restrictions include both constraints on certain specific activities and more general prohibitions.

Table 9-2 sets out the post-employment limitations under the Code.

Section 60(a) of the 1985 Ethics Code bars former public office holders from accepting an “appointment to a board of directors of, or employment with, an entity with which they had significant official dealings” in their last year in office. Section 60(a) does not cover contracts for service, including consulting agreements or retainers. Therefore, I do not believe section 60(a) is engaged by Mr. Mulroney’s business and financial dealings with Mr. Schreiber.

Section 59 prohibits former public office holders from becoming involved on behalf of a person or entity in connection with any specific ongoing proceeding, transaction, negotiation, or case to which the government is a “party” on which the public office holder “acted for or advised a department” and “which would result in the conferring of a benefit not for general application or of a purely commercial or private nature.” The restriction lasted for a two-year period after Mr. Mulroney left the office of prime minister. The Bear Head Project, after he left the office of prime minister, continued to be put forward by Thyssen and Mr. Schreiber. However, as I have found that Mr. Mulroney was retained to promote Thyssen vehicles internationally, I do not believe it can be said that Mr. Mulroney became involved with an ongoing proceeding, transaction, negotiation, or case to which the government was a party. Therefore, there was no contravention of this section of the 1985 Ethics Code.

TABLE 9-2: POST-EMPLOYMENT RESTRICTIONS UNDER THE 1985 ETHICS CODE

SECTION	TIME	ACTIVITY	ACTIVITY DIRECTED AT
59	Indefinitely	"[A]ct for or on behalf of any person, commercial entity, association, or union"	"[A]ny specific ongoing proceeding, transaction, negotiation, or case to which the Government is a party: (a) in respect of which the former public office holder acted for or advised a department; and (b) which would result in the conferring of a benefit not for general application or of a purely commercial or private nature"
60(a)	Two years after leaving office (for ministers)	"[A]ccept appointment to a board of directors of, or employment with, an entity with which they had significant official dealings during the period of one year immediately prior to the termination of their service in public office"	
60(b)		"[M]ake representations for or on behalf of any other person or entity"	"[T]o any department with which they had significant official dealings during the period of one year immediately prior to the termination of their service in public office"
60(c)		"[G]ive counsel, for the commercial purposes of the recipient of the counsel"	"[C]oncerning the programs or policies of the department with which they were employed, or with which they had a direct and substantial relationship during the period of one year immediately prior to the termination of their service in public office"

Section 60(b) limits post-employment representations for or on behalf of any person to any department with which the public office holder had significant official dealings during the one year immediately prior to the termination as a public office holder. Section 60(b) would, therefore, prohibit Mr. Mulroney from making representations on behalf of Mr. Schreiber to any department with which he (Mr. Mulroney) had significant official dealings during the one-year period immediately prior to when he stepped down as prime minister. Again, as I have determined that Mr. Schreiber retained Mr. Mulroney to promote the sale of Thyssen military vehicles to other countries, there was no domestic aspect to the mandate and he did not make representations on behalf of Mr. Schreiber to any government department. I conclude that there was no contravention of section 60(b).

The situation with section 60(c) of the 1985 Ethics Code is somewhat different. It prohibits a former public office holder from giving "counsel, for the commercial

purposes of the recipient of the counsel,” concerning the programs or policies of the department with which the former office holder was employed or had a “direct and substantial relationship” during the one-year period immediately prior to when he or she left public office. During the one-year period targeted by section 60(c), Mr. Mulroney, as prime minister, had significant dealings with all his ministers. I believe it can be said, therefore, that he had significant official dealings through his ministers with their government departments. The Bear Head Project was being promoted by Mr. Schreiber during the one-year period before Mr. Mulroney left the office of prime minister. However, it is not clear to me that, in order to carry out his international mandate, Mr. Mulroney would have been giving counsel concerning the programs or policies of the government departments with which he had significant dealings. I have concluded that there was no contravention of section 60(c) by Mr. Mulroney.

Section 57 of the 1985 Ethics Code contains a much more generic limitation on the former public office holder’s activities: specifically, “[p]ublic office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office.” At issue in section 57 is whether the former public office holder used his or her status as a former public office holder in a manner that is improper. Impropriety in my view depends on a sufficient connection to the person’s former public office. It is true that Mr. Schreiber retained Mr. Mulroney because he was a former prime minister. But there is nothing improper about a former prime minister being retained to perform work after he or she leaves office because he was prime minister. A contravention of this section requires the former public office holder to act in a manner that takes improper advantage of his or her previous office. Although there were many inappropriate aspects to Mr. Mulroney’s business and financial dealings with Mr. Schreiber, as I have found in the previous section of this chapter, I do not believe Mr. Mulroney acted in a manner that took improper advantage of his public office. I have concluded that this section is not engaged by the facts here.

FINDINGS

Section 7(b) of the 1985 Conflict of Interest and Post-Employment Code for Public Office Holders (1985 Ethics Code) provides, “[P]ublic office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.” I find that Mr. Mulroney contravened section 7(b) of the 1985 Ethics Code.

Section 7(d) of the 1985 Ethics Code requires public office holders to arrange their affairs so as to prevent “real, potential or apparent conflicts of interest.” Section 36 of the 1985 Ethics Code states that a public office holder shall not accord preferential treatment to friends or to organizations in which their friends have an interest, and shall take care not to be placed under “an obligation to any person or organization that might profit from special consideration on the part of the public office holder.” Mr. Mulroney, by agreeing to meet with Mr. Schreiber, accorded special treatment to a friend – Mr. Doucet – in relation to the Bear Head Project, an official matter that was under consideration by various government departments from 1988 through 1994. Mr. Doucet, who lobbied on behalf of Mr. Schreiber, would have benefited from that access. I believe that an appearance of conflict of interest was created, and that Mr. Mulroney acted contrary to his obligations under section 7(d) and section 36.

APPENDIX 9-1: STANDARDS RULING

Commission of Inquiry into Certain Allegations
Respecting Business and Financial Dealings
Between Karlheinz Schreiber and
the Right Honourable Brian Mulroney



Commission d'enquête concernant les allégations
au sujet des transactions financières et commerciales
entre Karlheinz Schreiber et
le très honorable Brian Mulroney

RULING ON STANDARDS OF CONDUCT

INTRODUCTION

[1] By virtue of Order in Council 2008–1092 establishing this Commission of Inquiry and constituting its Terms of Reference, I have been given a mandate that requires me to answer the 17 questions set out in paragraph (a) of the Terms of Reference.

[2] Among the questions I am called upon to answer are the following three, which are pertinent for the purpose of this ruling:

11. Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?
12. Was there appropriate disclosure and reporting of the dealings and payments?
13. Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?

[3] Before answering Questions 11 and 12, I must identify the norms and standards to be applied in interpreting whether the conduct under discussion was appropriate in the circumstances. Before answering Question 13, I must determine what those ethical rules or guidelines were.

[4] On November 12, 2008, the Commission issued a Notice of Hearing on Standards of Conduct, inviting the four parties to Part I of the Inquiry – the Factual Inquiry – to make submissions in relation to Questions 11, 12, and 13 of the Commission's Terms of Reference. The matters before me can be summarized as follows:

1. In relation to Questions 11 and 12, what are the applicable norms and standards in interpreting whether Mr. Mulroney's conduct was "appropriate" in the circumstances?

2. In relation to Question 13, what were the ethical rules and guidelines that were applicable to the business and financial dealings between Mr. Mulroney and Mr. Schreiber?

[5] The Attorney General of Canada (Attorney General), Mr. Schreiber, and Mr. Mulroney, through their counsel, filed written submissions in response to the Notice of Hearing. A public hearing was held on January 7, 2009, and oral submissions were heard. Although Mr. Houston, who represents Mr. Doucet, was present at the January 7 hearing, he chose not to make any submissions.

[6] I note that, as the hearings in Part I of the Inquiry are scheduled to commence on March 30, 2009, the submissions on the applicable norms and standards have been heard before any evidence has been heard by the Commission. That being the case, I must approach the issues at a conceptual level. Nonetheless, I think it important that, before I hear the evidence in the Factual Inquiry, all parties granted standing, particularly Mr. Mulroney, know by what standard the appropriateness of Mr. Mulroney's business and financial dealings, as well as the disclosure and reporting of those dealings and payments, will be assessed.

POSITIONS OF THE PARTIES

Position of the Attorney General of Canada

[7] Mr. Vickery, counsel for the Attorney General, prefaced his submissions by pointing out that a commission of inquiry under Part I of the *Inquiries Act* is neither a criminal trial nor a civil action, and this proposition forms the baseline on which the questions raised by the Commission must be addressed. He noted, however, that a commission may make a finding of misconduct in accordance with section 13 of the *Inquiries Act*.

[8] Briefly put, the position advanced by Mr. Vickery is that, even though I am not called upon or permitted to make findings as to criminal liability or civil responsibility,

the legislation, rules, guidelines, and jurisprudence that are applicable to the conduct of public office holders generally may be relied on to inform my views as to what constitutes appropriate conduct for the purposes of this Inquiry.

[9] Mr. Vickery stated that the particular standards that may inform my conclusion as to whether conduct was or was not appropriate must be standards that were in place at the time of the conduct concerned. Noting that the question of whether a particular statute, rule, or guideline will have application will depend on the facts I find during the course of the Inquiry, he referred me to the following legislation as being relevant: the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, s. 41; the *Financial Administration Act*, R.S.C. 1985, c. F-11, ss. 80 and 81; the *Criminal Code*, R.S.C. 1985, c. C-46, ss. 119, 121, and 122; and the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 220(3.1). These statutes create offences regarding certain types of prohibited conduct. In Mr. Vickery's submission, taken together, these statutes, and the offences identified therein, reflect society's disapproval of the particular types of conduct governed by them. Mr. Vickery submitted that an understanding of what types of conduct are subject to sanctions may inform my view as to whether particular conduct is appropriate in the context of the Terms of Reference.

[10] In addition to these statutes, Mr. Vickery submitted that, in determining whether Mr. Mulroney conducted himself in a manner that can be described as appropriate in the context of Questions 11 and 12, I should also refer to, and be guided by, *Standing Orders of the House of Commons* Nos. 21 and 23(2) and the *1985 Conflict of Interest and Post-Employment Code for Public Office Holders* (1985 Ethics Code). The 1985 Ethics Code applied to public office holders, defined to include ministers of the Crown. Mr. Vickery submitted that a document entitled *Guidance for Ministers*, which was published by the Privy Council Office in October 1988 and circulated to all ministers by the Prime Minister, is also relevant.

[11] With respect to Question 12 of the Terms of Reference, Mr. Vickery referred me to s. 220(3.1) of the *Income Tax Act*, which is the legislative underpinning on which the Voluntary Disclosure Program is based and permits the minister of national revenue to

waive penalties and interest in certain circumstances. Question 12, which calls on me to determine whether there was appropriate disclosure and reporting of the dealings and payments, necessarily encompasses, in Mr. Vickery's submission, disclosure and reporting to the Canada Revenue Agency, not for the purpose of determining any civil or criminal liability under that statute, but as part of the necessary context in determining whether the steps taken by Mr. Mulroney were appropriate.

[12] The 1985 Ethics Code was tabled in the House of Commons by Mr. Mulroney on September 9, 1985. Mr. Vickery referred me to a statement made in the House of Commons by Prime Minister Mulroney and an open letter from him to members of parliament and senators on the same day. The first paragraph of that letter reads:

Dear Colleagues: It is a great principle of public administration – I would even say an “imperative” – that to function effectively the government and the public service of a democracy must have the trust and confidence of the public they serve. In order to reinforce that trust, the government must be able to provide competent management and, above all, to be guided by the highest standards of conduct.

[13] This paragraph of the letter duplicates what was said by Mr. Mulroney at the outset of his remarks in the House of Commons when he tabled the 1985 Ethics Code: House of Commons, *Debates*, Official Report, First Session, Thirty-Third Parliament, 34 Elizabeth II, Volume V, 1985, at p. 6399.

[14] The 1985 Ethics Code contained enforcement mechanisms with regard to the post-employment regime and was structured much like a statute, including language that compelled certain conduct. Mr. Vickery noted that the 1985 Ethics Code remained in effect until it was modified by Prime Minister Chrétien in 1994. He submitted that the 1985 Ethics Code is relevant to inform whether the conduct referred to in Questions 11 and 12 was appropriate. Moreover, the 1985 Ethics Code and *Guidance for Ministers*, according to him, contain the ethical rules and guidelines that are relevant for the purposes of Question 13 of the Terms of Reference.

Position of Mr. Schreiber

[15] On behalf of Mr. Schreiber, Mr. Auger agreed with Mr. Vickery that, in determining whether Mr. Mulroney's conduct was appropriate, I should be guided by the various legislation in force at the relevant times. That legislation includes the *Income Tax Act*, the *Financial Administration Act*, and the *Parliament of Canada Act*. Mr. Auger also urged me to have regard to *Standing Order of the House of Commons No. 22*, the *Guides to Canada's Export Controls*, published in January 1993 and April 1994, and the 1985 Ethics Code as being relevant.

[16] Mr. Auger parted with Mr. Vickery, however, in relation to the 1985 Ethics Code. Whereas Mr. Vickery asserted that the 1985 Ethics Code is the only version that is relevant to Question 13, Mr. Auger stated that all versions of the ethics codes, up to the present time, should be considered because they share a common principle: they are all designed to protect and foster accountable and responsible government. Therefore, as I understand his submission, the standards are the same no matter what version of the ethics code are applied.

[17] Turning to Question 12 of the Terms of Reference, Mr. Auger submitted that taxation standards, and, in particular, the Voluntary Disclosure Program under the *Income Tax Act*, should be considered in determining whether there was appropriate disclosure and reporting of the dealings and payments. As well, I should consider obligations imposed by legislation dealing with the Goods and Services Tax in determining whether Mr. Mulroney's disclosure and reporting of the dealings and payments were appropriate. In this regard, Mr. Auger stated that, for the purpose of concluding whether there was civil or criminal liability, it is not a question of whether the appropriate percentage of GST was collected, or whether there was compliance with the *Excise Tax Act*. Rather, in his submission, I am to be informed by the relevant legislation in order to reach a determination whether the reporting and disclosure by Mr. Mulroney of the dealings and payments was appropriate.

[18] Finally, Mr. Auger argued that the practices, conventions, and rules governing lawyers called to the bar of the Province of Quebec ought to be considered by me in

determining what was appropriate. In his submission, if Mr. Mulroney was a member of the Quebec bar at the relevant times, certain rules and ethical obligations could be relevant to the determination of whether Mr. Mulroney's conduct was appropriate. He noted that a code of conduct is prescribed by *An Act Respecting the Barreau du Québec*, R.S.Q., c. C-26, and the *Code of Ethics of Advocates*, c. B-1, r.1.

Position of Mr. Mulroney

[19] In his submission on behalf of Mr. Mulroney, Mr. Pratte stated that, during the course of this Inquiry, it is the conduct of a single individual that is to be assessed. That individual is his client, Mr. Mulroney. Mr. Pratte submitted that my mandate as Commissioner is confined by the parameters as set forth in the Terms of Reference established by the Governor in Council. Like Mr. Vickery and Mr. Auger, he stressed that this Commission could make no finding of legal liability, be it criminal or civil.

[20] In his submission, Mr. Pratte took issue with the more expansive views expressed by both Mr. Vickery and Mr. Auger. He contended that the rules of procedural fairness require that Mr. Mulroney be apprised, from the outset, of the standard by which his conduct will be assessed. Like Mr. Vickery, he said that the applicable standard must be one that existed at the time the conduct in question occurred. However, he rejected the proposition put forward by Mr. Vickery and Mr. Auger that I should be informed by the conduct proscribed in legislation such as the *Criminal Code*, the *Financial Administration Act*, the *Income Tax Act*, or the *Parliament of Canada Act*. Mr. Pratte cautioned that, if I rely on such legislation to inform myself on what "appropriate" means, I will be doing indirectly what I cannot do directly, because I will be incorporating provisions from those statutes into the Terms of Reference.

[21] The applicable standard for all purposes, in Mr. Pratte's submission, can only be that as established by the 1985 Ethics Code. In answer to Mr. Auger's contention that I should be informed by the rules governing members of the Barreau du Québec, Mr. Pratte said that the federal government does not have the power to invest me with the

jurisdiction to apply the rules of the Barreau. In his submission, the rules applicable to the Barreau fall within provincial jurisdiction, and only the Barreau can investigate Mr. Mulroney's conduct under the rules. With respect to Standing Orders of the House of Commons, Mr. Pratte said that the House of Commons has exclusive jurisdiction to apply those orders. There is no reference to statutes or standing orders in the Terms of Reference and, therefore, I am not to be informed by what is contained in any standing order.

[22] Accordingly, Mr. Pratte said that I am to look to the 1985 Ethics Code when I answer Question 13, "Were there ethical rules or guidelines which related to those business and financial dealings?" He also contended that, in determining whether Mr. Mulroney's conduct was appropriate for purposes of Questions 11 and 12, I must consider only the 1985 Ethics Code, to the exclusion of all other laws, rules, or guidelines. Mr. Pratte asserted that the word "appropriate" can only be read to mean conformity and compliance with the operative provisions of the 1985 Ethics Code.

RELEVANT CASE LAW

[23] As the case law concerning public inquiries has evolved, certain principles have emerged.

[24] Cory J. had occasion to summarize what he referred to as "basic principles" governing public inquiries in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440 at para. 57, where he stated:

Perhaps the basic principles applicable to inquiries held pursuant to Part I of the Act may be summarized in an overly simplified manner in this way:

(a) (i) a commission of inquiry is not a court or tribunal, and has no authority to determine legal liability;

(ii) a commission of inquiry does not necessarily follow the same laws of evidence or procedure that a court or tribunal would observe.

(iii) It follows from (i) and (ii) above that a commissioner should endeavour to avoid setting out conclusions that are couched in the specific language of criminal culpability or civil liability. Otherwise the public perception may be that specific findings of criminal or civil liability have been made.

(b) a commissioner has the power to make all relevant findings of fact necessary to explain or support the recommendations, even if these findings reflect adversely upon individuals;

(c) a commissioner may make findings of misconduct based on the factual findings, provided that they are necessary to fulfill the purpose of the inquiry as it is described in the terms of reference;

(d) a commissioner may make a finding that there has been a failure to comply with a certain standard of conduct, so long as it is clear that the standard is not a legally binding one such that the finding amounts to a conclusion of law pertaining to criminal or civil liability;

(e) a commissioner must ensure that there is procedural fairness in the conduct of the inquiry.

[25] For the purpose of this ruling – namely, to articulate the standard by which the conduct of Mr. Mulroney will be assessed – the two most important principles, in my view, are those dealing with the Inquiry’s lack of authority to determine legal liability and the need to ensure procedural fairness in the conduct of the Inquiry.

[26] It is evident from the decision of Teitelbaum D.J. of the Federal Court of Canada in *Pelletier v. Canada (Attorney General)*, [2008] F.C.J. No. 1006; 2008 F.C. 803, that certain degrees of procedural fairness should be observed in a given case, depending on the nature of the Inquiry.

[27] The decision of the Federal Court of Appeal in *Dixon v. Canada (Governor in Council)*, [1997] 3 F.C. 169, was in relation to the Commission of Inquiry into the Deployment of Canadian Forces to Somalia. The court’s decision in that case is authority for the proposition, which I adopt and accept without reservation, that an Inquiry is an

agency of the Executive Branch of Government and, as such, must operate within the parameters established by the Governor in Council. That means that, as the Commissioner of this Inquiry, my jurisdiction is confined to responding to those questions and directions set forth in the Terms of Reference contained in Order in Council 2008–1092.

[28] The decision of O’Keefe J. of the Federal Court of Canada in *Stevens v. Canada (Attorney General)*, [2005] 2 F.C.R. 629, is instructive because it is authority for the proposition that the subject of an inquiry under the *Inquiries Act* is entitled to know the standard on which he or she is to be judged and that, to develop a standard after the impugned conduct has occurred, is a breach of procedural fairness.

[29] It will be remembered that, in *Stevens*, the plaintiff, Sinclair Stevens, sought a declaration to set aside the Report of the Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens (the Parker Inquiry Report). The Parker Inquiry investigated allegations of conflict of interest on the part of Mr. Stevens while he was a cabinet minister. The person appointed to head the inquiry was Chief Justice Parker (Commissioner Parker). His mandate as Commissioner included, among other things, the power to inquire into and report on “whether the Honourable Sinclair M. Stevens was in real or apparent conflict of interest as defined by the Conflict of Interest and-Post Employment Code for Public Office Holders and the letter from the Prime Minister to the Honourable Sinclair M. Stevens of September 9, 1985[.]”

[30] The 1985 Ethics Code implemented during the tenure of Mr. Mulroney as prime minister did not contain a definition of the term “conflict of interest.” Commissioner Parker developed his own definition of that term but did not make it known to Mr. Sinclair until he released his report.

[31] At para. 42 of his judgment, O’Keefe J. said:

I am of the opinion that the plaintiff did not know the standard he was to be judged against as the definition of conflict of interest was not made known to him until the

Report was given to him. This is especially so when [page 651] Commissioner Parker was to determine whether the plaintiff was in a real or apparent conflict of interest as defined by the Mulroney Code and the letter from the Prime Minister dated September 9, 1985. As well, it appears to me that it would be unfair to develop a standard at a point in time after the conduct being complained of has occurred. I am of the view that it was a breach of the duty of procedural fairness owed to the plaintiff, to set a standard or definition of conflict of interest by stating the definition for the first time in the Report. In my view, the definition should have been stated in the various conflict of interest guidelines or code.

[32] I endorse without reservation what O’Keefe J. had to say.

ANALYSIS AND CONCLUSIONS

[33] Unlike the situation faced by Commissioner Parker in *Stevens*, where the Commissioner’s mandate was restricted to require him to look only at what he referred to as “the Mulroney Code” in determining whether Mr. Stevens had been in a conflict of interest, my mandate is not so restrictive.

[34] The Terms of Reference set forth in my mandate specifically require me, in Question 13, to investigate and report on whether there were ethical rules or guidelines that related to the business and financial transactions between Mr. Mulroney and Mr. Schreiber and, if so, whether they were followed. Bearing in mind that I have yet to hear evidence establishing the facts of the matters under investigation in this Inquiry, it would appear at this conceptual stage that the 1985 Ethics Code and the *Guidance for Ministers* are relevant to Question 13. Both set out ethical rules and guidelines that were applicable on June 24, 1993, the date on which Mr. Mulroney stepped down as prime minister.

[35] The objective of the 1985 Ethics Code, as set out in section 4, was to enhance public confidence in the integrity of public office holders and the public service. In furtherance of this goal, public office holders had an obligation to act in a manner that would bear the closest public scrutiny – an obligation that, as explained in section 7(b),

was not fully discharged by simply acting within the law. This principle was incorporated into the 1988 *Guidance for Ministers*, which provided:

The Prime Minister establishes *standards of conduct for Ministers*, subject always to the basic requirements of the law. Ministers should recognize that the Prime Minister will hold them accountable for maintaining, and appearing to maintain, a standard of propriety in the conduct of public business stricter than required by law or expected in other occupations.[Emphasis in original.]

[36] The Terms of Reference, in Questions 11 and 12, respectively, require that I investigate and report on the following questions concerning the business and financial dealings as between Mr. Mulroney and Mr. Schreiber:

11. Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?
12. Was there appropriate disclosure and reporting of the dealings and payments?

[37] I am unable to accede to Mr. Pratte's argument that what is "appropriate," as referred to in Questions 11 and 12, can only be assessed with reference to the 1985 Ethics Code. I take Mr. Pratte's point that Mr. Mulroney is the focus of the Inquiry. However, this Inquiry is ultimately concerned with the good government of Canada. Therefore, if I accepted an interpretation of my mandate that did not respond to the directives to me contained in the Terms of Reference, I would fail in carrying out my duty as Commissioner.

[38] Question 13 asks expressly whether there were ethical rules or guidelines that related to the business and financial transactions between Mr. Mulroney and Mr. Schreiber and, if so, whether they were followed. As noted above, I interpret Question 13's reference to ethical rules or guidelines to mean the 1985 Ethics Code and the *Guidance for Ministers*. To accept Mr. Pratte's submission would be tantamount to rendering meaningless Question 11 – whether Mr. Mulroney's business and financial dealings with Mr. Schreiber, if any, were appropriate, considering the position of Mr. Mulroney as a current or former prime minister and member of parliament.

[39] Also, if I were to accept Mr. Pratte’s argument as referred to in the preceding paragraph, Question 12 – whether Mr. Mulroney acted appropriately in his disclosing and reporting of the dealings he may have had with Mr. Schreiber and of the payments that may have been made by Mr. Schreiber to Mr. Mulroney – would also be rendered redundant or meaningless. To put it another way, if I accepted Mr. Pratte’s submission, Questions 11 and 12 would be effectively subsumed by Question 13.

[40] Questions 11 and 12 operate at a broader level than Question 13, with its express reference to ethical rules and guidelines. In my view, the Governor in Council did not intend that I confine my assessment respecting the appropriateness, or otherwise, of Mr. Mulroney’s conduct to determining whether he had breached the 1985 Ethics Code. I think it would be accurate to conclude that conduct in breach of an applicable ethics code by a prime minister, former prime minister, or member of parliament is almost surely conduct that is capable of being described as inappropriate.

[41] However, the converse of that proposition cannot be true. Even if the conduct of a prime minister, a cabinet minister, or a member of parliament is not in breach of a code of ethics, it does not necessarily follow that the conduct is appropriate. For example, there may well be conduct that is not covered by the 1985 Ethics Code, yet which anyone would describe as inappropriate.

[42] There are two other reasons why “appropriate” in Questions 11 and 12 cannot be limited to the 1985 Ethics Code.

[43] First, by its express terms, the 1985 Ethics Code applies to public office holders, who are defined to include ministers of the Crown (section 2). The 1985 Ethics Code did not apply to members of parliament (section 2). Mr. Mulroney stepped down as prime minister on June 24, 1993, and sat as a member of parliament until the election in October 1993. If my consideration of “appropriate” were confined to the 1985 Ethics Code, I would be precluded from consideration of Mr. Mulroney’s conduct after he stepped down as prime minister. Nothing in the Terms of Reference imposes such a limitation. Indeed, an interpretation of this nature would be contrary to Question 11,

which expressly refers to Mr. Mulroney's position as a current or former prime minister *and* member of parliament.

[44] Second, section 60 of the 1985 Ethics Code sets out a limitation period for ministers of the Crown after departure from office. For a period of two years after leaving office, ministers are prohibited from undertaking the activities described in subsections 60 (a) through (c). Question 11 directs me to investigate and report on whether the business and financial dealings were appropriate considering Mr. Mulroney's position. Question 12 directs me to determine whether there was appropriate disclosure of the dealings and the payments. Nowhere in the Terms of Reference am I limited to investigating these matters to a two-year period after Mr. Mulroney stepped down as prime minister.

[45] Because of the degree of trust and confidence imposed by the people of Canada in the prime minister, cabinet ministers, and members of parliament, I believe they are entitled to expect the conduct of those holders of public office, whether in their official or personal capacity, to be exemplary.

[46] History has shown that successive prime ministers have brought in their own ethics codes. Without going into the complete record, it is sufficient to say that Prime Ministers Trudeau, Clark, Mulroney, Chrétien, Martin, and Harper all introduced codes of ethics.

[47] When he was prime minister, Mr. Mulroney wrote and spoke about what he expected of all members of parliament and senators in terms of conduct. In tabling the 1985 Ethics Code in the House of Commons on September 9, 1985, Prime Minister Mulroney, as he then was, said:

It is a great principle of public administration – I could even say an imperative – that to function effectively the government and the public service of a democracy must have the trust and confidence of the public they serve. In order to reinforce that trust, the government must be able to provide competent management *and, above all, to be guided by the highest standards of conduct.* [Emphasis added.]

[48] On that same day, Prime Minister Mulroney wrote a letter to all members of parliament and senators in which he used virtually identical language. (See Attorney General's Book of Documents at Tab D.)

[49] In October 1988, during the tenure of Mr. Mulroney as prime minister, the Privy Council Office published a document entitled *Guidance for Ministers*. The preface of that document says that the prime minister has asked that every minister receive and be guided by the advice contained in the document.

[50] Presumably, then, what is contained in the *Guidance for Ministers* (the guide), and in particular in Part V of the guide, entitled "Standards of Conduct," can be taken to reflect the standards that Prime Minister Mulroney expected from ministers with regard to their conduct.

[51] At the outset, Part V of the *Guidance for Ministers* instructs ministers that their rigorous compliance with the full letter and spirit of these particular standards is of the utmost importance. Then, under the heading "High Expectations," we find the following statement at page 45:

There is an obligation not simply to observe the law, but to act both in official and personal capacities in a *manner so scrupulous that it will bear the closest public scrutiny*.
[Emphasis added.]

[52] Later, on the same page, the following advice is given to ministers:

A practical test is to ask whether your conduct, or that of your staff, could cause any embarrassment or be difficult to justify to the public, should it be raised in Parliament or reported in the press.

[53] In my opinion, those two statements are indicative of the expectation Prime Minister Mulroney (as he then was) had respecting the standard of conduct to be maintained by him and by ministers serving in the cabinet of which he was the leader.

[54] In arriving at my conclusion about the standard by which the conduct of Mr. Mulroney is to be assessed, I have been guided by the work of other commissioners -- in particular, the work of the Honourable Frank Iacobucci, Q.C., who was the commissioner of the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmed Abou-Elmaati and Muayyed Nureddin (Internal Inquiry).

[55] In the Internal Inquiry, Commissioner Iacobucci was directed by his Terms of Reference to determine whether the actions of Canadian officials were “deficient in the circumstances” and whether there were “deficiencies” in the actions taken by Canadian officials to provide consular services. Recognizing that the identification of the “applicable norms or standards” against which the actions were to be assessed was an “essential starting point in assessing whether the actions of Canadian officials were deficient in the circumstances,” Commissioner Iacobucci called on participants and intervenors to submit written representations and oral submissions regarding those standards (Iacobucci Report at page 340).

[56] Commissioner Iacobucci noted that the standards he intended to apply were not legal standards. Nevertheless, he determined that “the basic principles that emerge from legal sources including Canadian law, the *Charter*, and various international instruments are helpful in informing my determination as to whether Canadian officials acted properly in the circumstances.” He noted that many of the standards or norms governing Canadian officials were to be found in internal policies, mandate, legislation, ministerial directions, and similar instruments. He expressed the view that “the actions of Canadian officials should be characterized as deficient only if they fell short of the norms that would have been followed by a reasonable person placed in comparable circumstances” (Iacobucci Report at page 341). The standard he articulated is an objective one.

[57] Like Commissioner Iacobucci, I do not intend to apply legal standards in assessing whether the business and financial dealings Mr. Mulroney had with Mr. Schreiber, if any, were appropriate and whether there was appropriate disclosure and reporting of the alleged dealings and payments.

[58] As a judge, I apply an objective standard on a regular basis to assist me in determining issues that come before me. I see no reason why I ought not to employ an objective standard in determining the appropriateness or otherwise of what Mr. Mulroney did, or did not do, relative to his business and financial dealings with Mr. Schreiber and his disclosing and reporting of those dealings and payments.

[59] As Commissioner Iacobucci pointed out in his report, that objective standard must be one that was operative at the time the dealings and payments in question occurred, and not a new standard developed by hindsight.

[60] In assessing whether Mr. Mulroney's conduct or behaviour was appropriate, I will be guided by the standard that he himself set during his tenure as the holder of the highest elected office in Canada. It is noteworthy that at page 46 of *Guidance for Ministers*, it is stated that "the *Prime Minister will hold Ministers personally accountable* for acting in accordance with the spirit of the highest standards of conduct, as well as complying with the letter of the Government's rules" [emphasis in original]. As the person responsible for applying standards of ethics to his ministers while he was prime minister, Mr. Mulroney must be taken to understand fully what those standards were.

[61] I intend to determine, on an objective basis, whether Mr. Mulroney, in the business and financial dealings he had with Mr. Schreiber (if any) and in disclosing these dealings and payments (if any), conformed with the highest standards of conduct – conduct that, objectively, is so scrupulous that it can bear the closest possible scrutiny.

[62] A finding of inappropriateness will be made only if there is credible evidence that Mr. Mulroney acted in a manner that falls short of conduct that, objectively, is so scrupulous that it can bear the closest possible scrutiny. This is the standard that will apply to whatever business and financial dealings Mr. Mulroney may have had with Mr. Schreiber. Similarly, with respect to disclosure and reporting of the dealings and payments, I will not find that Mr. Mulroney has acted in a manner that is inappropriate unless evidence of a like nature is before me.

[63] I believe that this standard is one that reflects the importance to Canadian democracy of the office of prime minister, as well as the public trust reposed in the integrity, objectivity, and impartiality of public office holders. It is a standard familiar to Mr. Mulroney, one accepted by him in the 1985 Ethics Code and in the 1988 *Guidance for Ministers*. It is a standard that reflects the need, as noted by Mr. Mulroney in his September 9, 1985, letter, to reinforce the trust and confidence of the public in both the government and the public service. As he noted in his letter, in order to reinforce that trust and confidence, the government must be guided by the highest standards of conduct. *Guidance for Ministers* states that there is an obligation on ministers not simply to observe the law but to act in both official and personal capacities in a manner so scrupulous that it will bear the closest public scrutiny. One of the purposes of an Inquiry is to bring that public scrutiny to bear. If the Prime Minister intended to hold ministers personally accountable to that level, then it follows that he himself would be accountable on the same basis.

[64] In carrying out my assessment of what was or was not appropriate, I will be informed by the 1985 Ethics Code and the 1988 *Guidance for Ministers*. However, I am mindful that even if the conduct of a prime minister, a cabinet minister, or a member of parliament is not in breach of a specific provision of a code of ethics, it does not necessarily follow that the conduct is appropriate. Section 5(3) of the 1985 Ethics Code is a further indication of the fact that the Code is not intended to represent a fully comprehensive scheme for governing the conduct of public office holders. Section 5(3) states: “Conforming to this Code does not absolve public office holders from conforming to any specific references to conduct contained in the statutes governing their department or office *and to the relevant provisions of legislation of more general application* such as the *Criminal Code*, the *Canadian Human Rights Act*, the *Privacy Act*, the *Financial Administration Act*, and the *Public Service Employment Act*” [emphasis added].

[65] As I have noted earlier in these reasons, I understand fully that I may not draw conclusions about civil or criminal responsibility. However, to determine whether any particular conduct meets the standard set out above, I conclude that I may be informed by deficiencies in conduct that are identified in the *Parliament of Canada Act*, the *Financial*

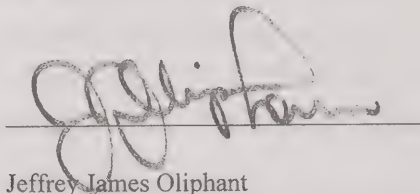
Administration Act, the *Income Tax Act*, the *Excise Tax Act*, and the *Criminal Code*, as they existed at the time of the events under investigation. I may also look to *Standing Orders of the House of Commons* Nos. 21 and 23(2). I understand Justice Cory’s caution in the *Commission of Inquiry on the Blood System* against setting out any conclusions that are couched in the specific language of criminal culpability or civil liability. I will be informed by these statutes and standing orders, not for the purpose of assessing criminal or civil liability, but for the purpose of understanding what is considered to be inappropriate conduct.

[66] As Mr. Vickery stated in his submissions, “because one must [as a public office holder] observe the law, at a minimum one must necessarily consider what laws impact the day-to-day conduct of the public office holders involved.”

[67] I note that Commissioner Iacobucci took the same approach, of being informed by internal policies, mandate, legislation, ministerial directions, and other like instruments, in assessing whether the conduct at issue in the Internal Inquiry was deficient.

[68] I do not believe the Terms of Reference lead me to consider the rules applicable to members of the Barreau du Québec. While the Terms of Reference refer to Mr. Mulroney’s position as a current or former prime minister and member of parliament, there is no reference to his position as a lawyer. This omission is to be expected, given that this is an Inquiry under the *Inquiries Act*, which is concerned with good government and public office.

Signed at Ottawa, Ontario, this ¹²~~25~~ day of February, 2009.



Jeffrey James Oliphant

Commissioner

APPENDIX 9-2: CLARIFICATION RULING

Commission of Inquiry into Certain Allegations
Respecting Business and Financial Dealings
Between Karlheinz Schreiber and
the Right Honourable Brian Mulroney



Commission d'enquête concernant les allégations
au sujet des transactions financières et commerciales
entre Karlheinz Schreiber et
le très honorable Brian Mulroney

RULING ON APPLICATION BY THE RIGHT HONOURABLE BRIAN MULRONEY FOR CLARIFICATION OF RULING ON STANDARDS OF CONDUCT

[1] This Commission of Inquiry was established to investigate and report upon certain allegations respecting business and financial dealings between Karlheinz Schreiber ("Mr. Schreiber") and the Right Honourable Brian Mulroney ("Mr. Mulroney").

[2] In the Terms of Reference set forth in the Order in Council establishing this Commission of Inquiry, a number of questions were posed that I am mandated to answer. Included in those questions are the following, both of which deal with the appropriateness, or otherwise, of the conduct of Mr. Mulroney:

11. Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?
12. Was there appropriate disclosure and reporting of the dealings and payments?

[3] On February 25, 2009, having earlier heard submissions from counsel for Mr. Mulroney, the Attorney General of Canada, and Mr. Schreiber, I delivered a ruling (the "Standards Ruling") in which I set forth the standard by which the appropriateness, or otherwise, of the conduct of Mr. Mulroney, as detailed in the questions above, will be assessed.

[4] I now have before me an application by Mr. Mulroney for clarification of certain aspects of the Standards Ruling.

[5] In essence, there are two aspects of the Standards Ruling that Mr. Pratte, counsel for Mr. Mulroney, says require clarification.

[6] The first of the two aspects is the period of time to which the standard I articulated in the Standards Ruling applies. Mr. Pratte asserts that application of the standard is confined to the

APPENDIX 9-2: CLARIFICATION RULING

RULING ON APPLICATION FOR CLARIFICATION OF RULING ON STANDARDS OF CONDUCT

2

period of time during which Mr. Mulroney served as prime minister of Canada and the period defined by the *1985 Conflict of Interest and Post-Employment Code for Public Office Holders* (1985 Ethics Code).

[7] The second aspect of the Standards Ruling on which clarification is sought is whether I intend to make findings as to the appropriateness of conduct by referring to *Standing Orders of the House of Commons* Nos. 21 and 23(2) and to statutes, such as the *Parliament of Canada Act*, the *Financial Administration Act*, the *Income Tax Act*, the *Excise Tax Act*, and the *Criminal Code* as they existed at the time of the events being investigated. If I do not intend to make findings by referring to those statutes or standing orders, Mr. Pratte has asked that I clarify what I intend to derive from them.

[8] Mr. Vickery, counsel for the Attorney General of Canada, takes the position that no clarification of the Standards Ruling is required because there is no ambiguity in the ruling. Mr. Vickery asserts that the principles of finality and certainty must be recognized. Mr. Vickery submits that what Mr. Pratte is doing is arguing once again matters that were fully argued prior to my delivering the Standards Ruling.

[9] Mr. Auger, on behalf of Mr. Schreiber, endorses the position taken by counsel for the Attorney General of Canada.

[10] I am satisfied on the basis of the case law cited to me by Mr. Pratte that I have the jurisdiction to clarify the Standards Ruling. First, although there is a general rule against a tribunal revisiting a final decision that was properly before it and that was made in accordance with its enabling legislation, the application of the general rule must be more flexible and less formalistic in the context of a commission of inquiry.

[11] Here, the application of the principle of *functus officio* must be applied in the flexible, less formalistic manner described by the Supreme Court of Canada in *Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848 because there is no right of appeal of rulings such as my ruling on standards of conduct, although it can be attacked by way of an application for judicial review. See also the decision of the Federal Court of Appeal in *Vatanabadi v. Canada (Minister of Employment and Immigration)*, [1993] 2 FC 492.

APPENDIX 9-2: CLARIFICATION RULING

RULING ON APPLICATION FOR CLARIFICATION OF RULING ON STANDARDS OF CONDUCT

3

[12] In deciding that I may revisit the Standards Ruling to clarify it, I am cognizant of the Terms of Reference which specifically authorize me to adopt any procedures and methods I consider expedient for the proper and efficient conduct of the Inquiry. Moreover, I note that the Standards Ruling is an interlocutory ruling as opposed to a final ruling. Also, I am of the view that no party to this Inquiry or the public interest will be prejudiced by my clarifying the Standards Ruling.

[13] When I use the term “revisit my ruling,” I do not mean to say, either explicitly or implicitly, that I am going to defend that ruling or to change it. What I am prepared to do, however, is to clarify it by responding to the questions raised by Mr. Pratte in his submission to me at the hearing of the application for clarification.

[14] There is, in my view, no lack of clarity in the standard I set for assessing the appropriateness, or otherwise, of Mr. Mulroney’s conduct in terms of his business and financial dealings with Mr. Schreiber and in terms of the reporting and disclosure of payments he may have received from Mr. Schreiber. The standard I set and how I intend to apply that standard are to be found at paragraphs 61 and 62 of the Standards Ruling.

[15] With respect to the first area of concern identified by Mr. Pratte, I have no interest in delving into the private life or private business affairs of Mr. Mulroney. My interest is restricted to those issues set forth in the Terms of Reference as established by the Governor in Council. As regards the timeframe, if there is evidence of conduct on the part of Mr. Mulroney that occurred after he left the high office of prime minister but that relates to the matters before me under the Terms of Reference, I will apply the standard set in the Standards Ruling for assessing that conduct.

[16] I turn now to a consideration of the second area of concern expressed by Mr. Pratte – namely, whether I intend to make findings as to the appropriateness, or otherwise, of Mr. Mulroney’s conduct by referring to various statutes as noted in the Standards Ruling.

[17] Depending on where the evidence leads me, I may, as indicated in the Standards Ruling, look to statutes for relevant information. Also, depending on the evidence before me, I may want to look at one or more statutes to ensure that, in writing my report, I avoid using the language of the statute or language that may lead members of the public to perceive that specific findings of criminal or civil liability have been made. This is in keeping with one of the basic principles

OLIPHANT COMMISSION

APPENDIX 9-2: CLARIFICATION RULING

governing public inquiries in Canada as set forth in the decision of the Supreme Court of Canada in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440 at paragraph 57 where Justice Cory said:

... a commissioner should endeavour to avoid setting out conclusions that are couched in the specific language of criminal culpability or civil liability. Otherwise the public perception may be that findings of criminal or civil liability have been made.

[18] I will, as noted in the Standards Ruling, use an objective test in assessing the conduct in question. Before I am in a position to determine if there has been a deficiency in conduct, I need first determine what, objectively, would be considered appropriate conduct in a given set of circumstances. To that end, I may look to the statutes, as set out at paragraph 65 of the Standards Ruling, to assist me in formulating what may be considered appropriate conduct.

[19] At paragraph 65 of the Standards Ruling, I used the expression “I may be informed by” in relation to how I might utilize certain statutes. At no time did I intend to inform myself through these statutes as to specific deficiencies in conduct that may lead one to infer that I am commenting on criminal or civil liability. My use of the term “inform” as to these statutes was in reference to their assisting me in identifying a level of appropriate conduct. One can only determine if there are deficiencies in conduct after one has determined the standard by which the conduct under scrutiny can be judged on any given set of facts.

[20] By way of example, I know that it is not my role to conclude, or even comment on, whether specific sections of the *Income Tax Act* were violated. I am keenly aware that I am precluded from doing so. However, I am directed by the Terms of Reference to inquire and answer a question as to whether there was appropriate disclosure and reporting of any financial dealing. Depending on the evidence that comes before me, I may need to inform myself as what the *Income Tax Act* says about reporting and disclosure in order to be able to determine whether the reporting and disclosure was appropriate. My conclusions will be based on the facts to be established in the evidence to come.

[21] It is for further clarification of the issues highlighted above that I wish to specifically address the *Criminal Code of Canada*. While I referred to the *Criminal Code* in a direct quote

APPENDIX 9-2: CLARIFICATION RULING

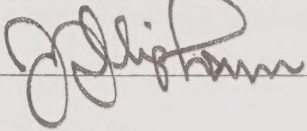
RULING ON APPLICATION FOR CLARIFICATION OF RULING ON STANDARDS OF CONDUCT

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from section 5 (3) of the 1985 Ethics Code in paragraph 64 of the Standards Ruling and while I mentioned the *Criminal Code* again in paragraph 65 of the same ruling, I must state, upon reflection, that the *Criminal Code* is of little, if any, value in this endeavour. As a statute that proscribes, as opposed to prescribes, conduct, it appears to be of trifling value in assisting me in setting the standard for conduct in any given fact scenario.

[22] Subject to my observation in the preceding paragraph, I note that, although I have listed in the Standards Ruling a number of statutes and two standing orders of the House of Commons, by which I may inform myself, until I hear the evidence I cannot say which of them, if any, will be relevant to my determination of appropriateness. If there is a possibility that a finding of inappropriateness will be made, Mr. Mulroney will be given reasonable notice under section 13 of the *Inquiries Act*, and he shall have full opportunity to respond before any report is issued by me.

Signed at Ottawa, Ontario this ^{15th} day of April, 2009

A handwritten signature in dark ink, appearing to read 'J. Oliphant', is written over a horizontal line.

Jeffrey James Oliphant
Commissioner

OLIPHANT COMMISSION

NOTES

- 1 *Parliament of Canada Act*, RSC 1985, c. P-1, s. 41.
- 2 *Financial Administration Act*, RSC 1985, c. F-11, ss. 80 and 81.
- 3 *Criminal Code*, RSC 1985, c. C-46, ss. 119, 121, and 122.
- 4 *Excise Tax Act*, RSC 1985, c. E-15.
- 5 *Income Tax Act*, RSC 1985, c. 1 (5th Supp.), ss. 12(1)(a) and 220(3.1).
- 6 *Conflict of Interest and Post-Employment Code for Public Office Holders* (Ottawa: Office of the Assistant Deputy Registrar General of Canada, 1985)[1985 Ethics Code].
- 7 *Guidance for Ministers* (Ottawa: Privy Council Office, 1988).
- 8 On November 1, 1999, Revenue Canada became the Canada Customs and Revenue Agency (CCRA). CCRA became the Canada Revenue Agency in 2003: <http://www.cra-arc.gc.ca/tx/ndvdl/tchtx/pdf/2007TS18/nlgsh/pp1-2-eng.pdf>
- 9 Canada, *Report of the Independent Advisor into the Allegations Respecting Financial Dealings Between Mr. Karlheinz Schreiber and the Right Honourable Brian Mulroney* (Ottawa: Minister of Public Works and Government Services, 2008), available online at <http://www.pco-bcp.gc.ca/docs/information/publications/ria-rci/complete-complet-eng.pdf> [Johnston, *First Report*].
- 10 Testimony of Mr. Brian Mulroney, Transcript, May 12, 2009, pp. 3383–84.
- 11 *Guidance for Ministers*, 45.
- 12 *Brossard (Town) v. Quebec*, [1988] 2 SCR 279 at para. 81, per Beetz J for the majority.
- 13 *Threader v. Canada (Treasury Board)*, [1987] 1 FC 41 at para. 23.
- 14 *Canada (Attorney General) v. Ash*, 2006 FCA 358.
- 15 See, for example, 1985 Ethics Code, s. 4 and s. 7(e).
- 16 *R. v. Hinchey*, [1996] 3 SCR 1128 at para. 18.
- 17 It is not entirely clear whether it was the 1985 Ethics Code at issue in this case or the virtually identical code for the public service.
- 18 *LGS Group Inc. v. Canada (Attorney General)*, [1995] 3 FC 474 (FCTD).
- 19 *Ibid.* at para. 46.

